

HOUSE RESOURCES & CONSERVATION COMMITTEE
ADMINISTRATIVE RULES REVIEW

Table of Contents

2006 Legislative Session

IDAPA 20 - DEPARTMENT OF LANDS

20.03.02 - Rules Governing Exploration and Surface Mining in Idaho

Docket No. *20-0302-0502 (Fee Rule)* 2

20.03.08 - Easements on State Owned Lands

Docket No. *20-0308-0501 (Fee Rule)*63

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

*26.01.20 - Rules Governing the Administration of Park
and Recreation Areas and Facilities*

Docket No. *26-0120-0501 (Fee Rule)* 72

RESOURCES & CONSERVATION COMMITTEE

IDAPA 20 - DEPARTMENT OF LANDS

20.03.02 - RULES GOVERNING EXPLORATION AND SURFACE MINING IN IDAHO

DOCKET NO. 20-0302-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Idaho Code Section 67-5224(5)(c) this pending rule will not become final and effective until it has been approved, amended or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the State Board of Land Commissioners has adopted a pending rule. The action is authorized pursuant to Idaho Code Section 58-104.

DESCRIPTIVE SUMMARY: The Idaho Department of Lands (IDL) conducted negotiated rulemaking to promulgate temporary rules pertaining to permanent closure of cyanidation facilities permitted to operate in Idaho and performance bond requirements for permanent closure, as required to implement the provisions of Senate Bill 1169. SB 1169 amended Idaho Code Title 47, Chapter 15. The amendments contained in SB 1169 require IDL to review and approve permanent closure plans for cyanidation facilities, and to establish permanent closure bond requirements. SB 1169 directed IDL and the Department of Environmental Quality (DEQ) to promulgate temporary rules by August 1, 2005. To ensure consistency among IDL's and DEQ's rules regarding permanent closure, IDL conducted the negotiated rulemaking in coordination with DEQ.

In conjunction with members of the regulated community and other interested parties, IDL initiated rulemaking and negotiated temporary/proposed rules to establish rules pertaining to permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans. The issues addressed in the temporary rules include, but are not limited to, inclusion of definitions pertaining to the operation and permanent closure of cyanidation facilities, application and performance bond requirements for permanent closure of cyanidation facilities, application fees, and provisions for approving or rejecting an application. The State Board of Land Commissioners ("Board") adopted the temporary rule at its regular meeting on July 12, 2005. The Notice of Rulemaking - Temporary Rule was published in the Idaho Administrative Bulletin, September 7, 2005, Volume 05-9, pages 206 through 234.

The issues addressed in the pending rule consist of the negotiated temporary rule text, which is the substantive content of the pending rule, and other, less substantive changes to IDL's "Rules Governing Exploration and Surface Mining in Idaho," including, but not limited to, miscellaneous technical corrections; correction of internal citation cross-references; clarification and/or simplification of certain current rule language; deletion of redundant text; deletion of language that unnecessarily repeats statutory language and replacing that language with appropriate citations to Idaho Code.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS**Docket No. 20-0302-0502****Rules Governing Exploration and Surface Mining in Idaho****PENDING FEE RULE**

The Notice of Rulemaking - Proposed Rulemaking (Fee Rule) was published in the Idaho Administrative Bulletin on October 5, 2005, Vol. 05-10, pages 377 through 420. After consideration of public comments, the Board adopted the pending rule on November 15, 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature. The pending rule text is in legislative format. Language IDL proposes to add is underlined. Language IDL proposes the delete is struck out.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 377 through 420.

FEE SUMMARY: The following is a specific description of the fees being imposed by these rules.

Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fees being imposed are justified and necessary to protect public health, safety, and welfare. Amendments to Section 47-1506(g), Idaho Code, authorized the Board to require a reasonable fee for reviewing and approving a permanent closure plan; the fee may include the cost to employ a qualified independent party to verify the accuracy of the cost estimate to complete permanent closure. IDL lacks the specialized training and expertise necessary to effectively perform these functions. IDL will therefore seek assistance from the DEQ and/or qualified consultants to provide the expertise necessary for permanent closure plan review. These consultations will be necessary to ensure that appropriate measures are in place, prior to approval of a plan, to protect public health, safety, and welfare.

The pending rule will require an operator of a cyanidation facility to pay an application processing and review fee and a permanent closure cost estimate verification fee. The minimum processing and review fee will be \$5,000 or, upon agreement between the department and the applicant, a sum equal to the department's estimated reasonable costs to review a permanent closure application if greater than \$5,000. The permanent closure cost estimate verification fee will be a sum equal to the reasonable estimated costs for a qualified independent party to review a closure cost estimate provided by a cyanidation facility operator.

The application fees apply only to applications for permanent closure of cyanidation facilities; operators engaged in surface mining operations are not required to pay an application fee.

FISCAL IMPACT: No negative impact occurs from this rulemaking; this provision is not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the pending rule, contact Eric Wilson at (208)334-3488, ewilson@idl.state.id.us.

DATED this 16th day of November, 2005.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS**Rules Governing Exploration and Surface Mining in Idaho****Docket No. 20-0302-0502****PENDING FEE RULE**

Winston A Wiggins, Director
Idaho Department of Lands
P.O. Box 83720
954 W. Jefferson Street
Boise, Idaho 83720-0050
Phone (208)334-0200 / Fax (208)334-2339

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the State Board of Land Commissioners (“Land Board”) has adopted a temporary rule and the Idaho Department of Lands (“IDL”) is commencing proposed rulemaking. The action is authorized pursuant to Section 58-104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Tuesday, October 18, 2005
6:00 to 8:30 p.m.
Idaho Department of Lands
3780 Industrial Avenue South
Coeur d’Alene, Idaho

Thursday, October 20, 2005
6:00 to 8:30 p.m.
2nd Floor Courtroom, Borah Building
304 North 8th Street
Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDL conducted negotiated rulemaking to promulgate temporary rules pertaining to permanent closure of cyanidation facilities and permanent closure performance bond requirements to implement the provisions of Senate Bill 1169, which amended Idaho Code Title 47, Chapter 15. The amendments contained in SB 1169 require IDL to review and approve permanent closure plans for cyanidation facilities, and to establish permanent closure bond requirements. SB 1169 directed IDL and the Department of Environmental Quality (DEQ) to promulgate temporary rules by August 1, 2005. To ensure consistency among IDL’s and DEQ’s rules regarding permanent closure requirements, IDL conducted the negotiated rulemaking in coordination with DEQ.

In conjunction with members of the regulated community and other interested parties, IDL initiated negotiated rulemaking to establish temporary/proposed rules pertaining to permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans. Issues addressed in the temporary rules include, but are not limited to, definitions pertaining to the operation and permanent closure of cyanidation facilities, application and performance bond requirements for permanent closure of cyanidation facilities, requirements for permanent closure cost estimates, application fees,

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Docket No. 20-0302-0502

Rules Governing Exploration and Surface Mining in Idaho

PENDING FEE RULE

and provisions for approving or rejecting an application. The State Board of Land Commissioners adopted the temporary rule at its regular meeting on July 12, 2005.

Issues addressed in the proposed rule will include the negotiated temporary rule text and other amendments to IDL's "Rules Governing Exploration and Surface Mining in Idaho." The latter include, but are not limited to, correction of internal citation cross-references; clarification and/or simplification of language in the current rule; deletion of redundant text; deletion of statutory language from the rules and replacing it with appropriate citations to Idaho Code; and other miscellaneous technical corrections.

In addition to the negotiated temporary rule, substantive changes to IDAPA 20.03.02 include, provisions that will allow operators of cyanidation facilities to apply to file permanent closure bonds in phases that coincide with phased construction, operation, and closure of cyanidation facilities; inclusion of requirements for nonpoint source control and best management practices to protect groundwater, as well as surface water, from nonpoint source sediment or other pollutants that may enter surface or ground waters from mining operations; and a provision allowing the director to request a geotechnical analysis and report for pit walls if there is a potential for the wall to fail, regardless of height.

The proposed rule text is in legislative format. Language IDL proposes to add is underlined. Language IDL proposes the delete is struck out. Public comment should be addressed to these additions and deletions.

After consideration of public comments, IDL intends to present the final proposal to the Land Board for adoption of a pending rule in November 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature if approved by the Legislature.

FEE SUMMARY: The following is a specific description of the fees being imposed by these rules.

Amendments to Section 47-1506(g), Idaho Code, authorized the Land Board to require a reasonable fee for reviewing and approving a permanent closure plan. The fee may include the cost to employ a qualified independent party to verify the accuracy of the cost estimate to complete permanent closure, which will be prepared for and submitted to IDL by an operator of a cyanidation facility. IDL will seek assistance from the DEQ and/or qualified consultants to provide the specialized technical expertise necessary for permanent closure plan review. These consultations will be necessary to ensure that appropriate measures are in place, prior to approval of a permanent closure plan, to protect public health, safety, and welfare.

The proposed rule will require an operator of a cyanidation facility to pay an application processing and review fee and a permanent closure cost estimate verification fee. The minimum amount of the processing and review fee will be \$5,000 or, upon agreement between IDL and an operator, a sum equal to IDL's estimated reasonable costs to review a permanent closure application if IDL estimates the cost will be more than \$5,000. The permanent closure cost estimate verification fee will be a sum equal to the reasonable estimated costs for a qualified independent party to review a permanent closure cost

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

estimate.

The application fees apply only to applications for permanent closure of cyanidation facilities; operators engaged in surface mining operations are not required to pay an application fee.

FISCAL IMPACT: No negative impact occurs from this rulemaking; this provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rules pertaining to permanent closure of cyanidation facilities was drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. The scope of rule negotiations included application requirements for permanent closure of cyanidation facilities, the application fee, procedures for application processing and review, permanent closure requirements, and bonding provisions. Subsequent discussions were held to address concerns regarding the proposed amendments to the reclamation rules for exploration and surface mining operations, and to refine or clarify certain provisions in the negotiated temporary rules. The Notice of Intent to Promulgate Rules-Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Volume 05-4, Page 16.

GENERAL INFORMATION: For more information on IDL's programs and activities, visit IDL's web site at www2.state.id.us/lands/.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rule, contact Eric Wilson at (208)334-3488, ewilson@idl.state.id.us.

Anyone may submit written comments regarding this proposed rule by mail, fax, or e-mail to the address below. IDL will consider all written comments received by the undersigned on or before October 26, 2005.

DATED this 23rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

20.03.02 - RULES GOVERNING EXPLORATION, ~~AND~~ SURFACE MINING ~~IN IDAHO~~, AND CLOSURE OF CYANIDATION FACILITIES

000. LEGAL AUTHORITY.

The following rules are promulgated by the Idaho State Board of Land Commissioners ("board") pursuant to the Idaho Surface Mining Act, Title 47, Chapter 15 ("act chapter"), Idaho Code, and in the event of any conflict between these rules and the act, the latter shall be controlling authorizes the Idaho State Board of Land Commissioners ("board") to promulgate rules pertaining

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

to mineral exploration; surface mining operations; reclamation of lands affected by exploration and surface mining operations, including review and approval of reclamation and permanent closure plans; requirements for performance bonds for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving permanent closure plans for cyanidation facilities, including the reasonable cost to employ a qualified independent party, acceptable to the applicant and the board, to review permanent closure plans and to verify the accuracy of cost estimates to complete permanent closure. The board has delegated to the director of the Department of Lands ("department") the duties and powers under the ~~act~~ chapter and these rules; provided ~~that~~ the board ~~shall~~ retains responsibility for administrative review. (11-1-89)()

001. TITLE AND SCOPE.

01. Purpose. ~~It is the purpose of these rules to provide for the protection of the public health, safety, and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration operations and surface mining operations and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to exploration operations and surface mining operations on lands within the state. These rules are not intended to require reclamation activities in addition to those required by the act.~~ **Title.** These rules shall be cited as IDAPA 20.03.02, "Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities," IDAPA 20, Title 03, Chapter 02. (11-1-89)()

02. Purpose. These rules are intended to provide for the protection of public health, safety, and welfare, by ensuring that all the lands within the state disturbed by exploration and surface mining operations are properly reclaimed and ensuring the proper permanent closure of cyanidation facilities and thereby conserve natural resources; aid in the protection of wildlife, domestic animals, and aquatic resources; and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set forth in Executive Order No. 88-23 as it pertains to exploration and surface mining operations and cyanidation facilities operating in the state. These rules are not intended to require reclamation or permanent closure activities in addition to those required by the chapter. ()

023. Scope. ~~In general,~~ These rules establish: (11-1-89)()

- a. Requirements for exploration ~~operations~~; (11-1-89)()
- b. Procedures for approval of a surface mining reclamation plan, including an operating plan, when required by Section 47-1506(b), Idaho Code; (7-1-98)
- c. Procedures for approval of a permanent closure plan for cyanidation facilities; ()
- d. Requirements for performance bonds for postmining reclamation to be posted prior to beginning surface mining operations; (11-1-89)
- e. Requirements for performance bonds for permanent closure of cyanidation facilities to be posted prior to beginning the construction and operation of a cyanide ore-

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

processing facility; ()

~~df.~~ Reclamation requirements lands disturbed by exploration and surface mining operations; and (11-1-89)()

~~g.~~ Permanent closure requirements for cyanidation facilities; and ()

~~eh.~~ Procedures for ensuring compliance with ~~the Idaho Surface Mining Act~~ the chapter and these rules. (11-1-89)()

034. Other Laws. Operators engaged in ~~E~~exploration, ~~operations and~~ surface mining operations, and operation of a cyanidation facility shall comply with all applicable laws and rules ~~and regulations and laws~~ of the state of Idaho including, but not limited to the following: (11-1-89)()

~~a.~~ Idaho water quality standards and waste water treatment requirements established in ~~(Title 39, Chapter 1, Idaho Code); IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements"; and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code) and rules promulgated pursuant thereto as~~ IDAPA 58.01.11, "Ground Water Quality Rule," administered by the Idaho Department of Environmental Quality ("DEQ"). (11-1-89)()

~~b.~~ Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" and IDAPA 58.01.06, "Solid Waste Management Rules," administered by the DEQ. ()

~~bc.~~ Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ as defined in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation". (11-1-89)()

~~ed.~~ Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (11-1-89)

~~de.~~ Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules ~~as~~ promulgated and administered by the Idaho Department of Water Resources. (11-1-89)()

045. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, surface mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership, with the following exceptions: (7-1-93)()

~~a.~~ These rules *apply to surface mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. Provided further that* ~~These rules shall in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or previously approved amendment thereto;~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

or a performance bond for reclamation obtained prior to January 1, 1997. ~~If a material change in circumstances arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a supplemental reclamation plan. All public or governmental agencies who extract minerals to be used by or for the benefit of such agency must comply with these rules.~~

(7-1-98)()

b. These rules shall not apply to: ()

i. Any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972; ()

ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances resulting from underground mining. ()

iii. Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway, provided the affected land is an integral part of such highway. ()

c. Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved surface mining plan for the purpose of these rules if they are covered by a valid lease granted by the board in accordance with Title 47, Chapter 7, Idaho Code and IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing," and a valid mineral lease bond; have a valid stream channel alteration permit issued by the Idaho Department of Water Resources; and have a plan of operation for the mineral lease approved by the department. ()

~~**b.d.** Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which disturb more than two (2) acres, shall comply with the provisions of Section 069.;~~ (7-1-98)()

i. Disturb more than two (2) acres shall comply with the provisions of Section 069; or ()

~~**e.ii.** Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which dDisturb less than two (2) acres, are exempt from provisions of Section 069, but must are only required to comply with Subsections 060.06.a., 060.06.b., and through 060.06.c.~~ (7-1-98)()

~~**d.** Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway shall not be deemed surface mining operations under these rules, provided that the affected land is an integral part of the public highway.~~ (7-1-98)

e. These rules do not apply to any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972. However, if an operator elects to

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~re-affect an area mined prior to May 31, 1972, the newly disturbed lands shall be subject to the act and these rules.~~ (11-1-89)

~~f. These rules do not apply to surface mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances caused by an underground mining operation.~~ (11-1-89)

~~g. Sand and gravel mining operations in state owned beds of navigable lakes, rivers, or streams shall constitute an approved surface mining plan for the purpose of these rules, if they:~~ (11-1-89)

~~i. Are covered by a valid lease granted by the board in accordance with the board's "Rules Governing Riverbed Mineral Leasing," (IDAPA 20.03.05);~~ (11-1-89)

~~ii. Have a valid stream channel alteration permit issued by the Department of Water Resources;~~ (11-1-89)

~~iii. Have a plan of operation for the mineral lease approved by the Department of Lands; and~~ (11-1-89)

~~iv. Are covered by a valid mineral lease bond.~~ (11-1-89)

e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005; however, if there is a material modification or material expansion to a cyanidation facility after July 1, 2005, these rules shall apply to the modification or expansion. ()

002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.

The department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 954 West Jefferson Street, Boise, Idaho 83720. ()

003. ADMINISTRATIVE APPEALS.

If an operator fails to comply with the provisions of the chapter or these rules, the director may notify the operator of such noncompliance and endeavor to remedy any alleged violation in accordance with Section 47-1513, Idaho Code. If the director determines that administrative action is necessary to correct any alleged violations, up to and including forfeiture of a reclamation or permanent closure bond, he shall follow the procedures established in Section 47-1513, Idaho Code. ()

~~01. Notice of Non-Compliance. Whenever the director becomes aware that an operator has not complied with the provisions of the act or these rules, the director shall notify the operator in writing of this non-compliance and through conference with the operator seek to remedy the non-compliance. Any period set by the parties for correction of a violation shall be~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~binding.~~

~~(11-1-89)~~

~~**02. Administrative Complaint.** In the event of the failure of any conference, conciliation, and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt, signed by the operator, an officer of a corporate operator, or the designated agent of the operator, shall constitute service.~~

~~(11-1-89)~~

~~**03. Answer and Hearing.** The operator shall be required to answer the formal complaint and request a hearing before a hearing officer appointed by the director within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing shall be held at a time not less than thirty (30) days after the date the operator requests such a hearing. The board shall issue subpoenas at the request of the director and at the request of the charged operator. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules.~~

~~(11-1-89)~~

~~**04. Order.** The hearing officer shall enter an order in accordance with Sections 67-5212, Idaho Code, which, if adverse to the operator, shall designate a time period within which prescribed corrective action, if any, should be taken. The designated time period shall be sufficient to allow a reasonably diligent operator to correct any violation. Procedure for appeal of an order is outlined in Section 160.~~

~~(11-1-89)~~

~~**05. Compliance With Order.** Upon the operator's compliance with the order, the director will consider the matter resolved and shall take no further action with respect to such noncompliance.~~

~~(11-1-89)~~

~~**06. Default by Operator.** If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the director may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands.~~

~~(11-1-89)~~

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into this rule.

()

005. INCLUSIVE GENDER.

For all sections and subsections of these rules, the terms and references used in the masculine sense include the feminine sense and vice versa, as appropriate.

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006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 954 West Jefferson Street, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200.

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007. PUBLIC RECORDS ACT COMPLIANCE.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code. ()

~~0048.~~ -- 009. (RESERVED).

010. DEFINITIONS.

~~01.~~ ~~Act.~~ ~~The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code.~~ (11-1-89)

021. Affected Land. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

032. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

043. Best Management Practices (“BMPs”). ~~Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals.~~ Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (11-1-89)()

054. Board. The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (11-1-89)

05. **Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. ()

06. **Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. ()

07. **Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. ()

078. Department. The Idaho Department of Lands. Its business address is 954 West Jefferson Street, Boise, Idaho 83720. (7-1-98)

069. DEQ. The Department of Environmental Quality. (11-1-89)

0810. Director. The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

designated by the director.

(11-1-89)

11. Discharge. With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ()

12. Exploration Drill Holes. Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

103. Exploration Operations. Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)

144. Exploration Roads. Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

125. Exploration Trenches. Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

136. Final Order of the Board. A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (11-1-89)

17. Groundwater. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ()

148. Hearing Officer. That person selected by the board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)

19. Land Application. With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. ()

1520. Material Change. ()

a. For surface mining, Aa change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (7-1-98)()

ai. Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)

bii. Substantially modifies surface water management, not to include routine implementation and maintenance of ~~best management practices~~ BMPs; (7-1-98)()

ciii. Exceeds the permitted acreage; or (7-1-98)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

- ~~4~~iv. Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)
- b. For cyanidation facilities, a change which causes one (1) of the following to occur: ()
- i. A substantial adverse effect to the geotechnical stability of the cyanidation facilities; ()
- ii. The need for a substantial change in the water management plan. ()
- iii. ~~A significant increase in~~ Increases in overall estimated permanent closure costs by more than fifteen percent (15%). ()
21. Material Modification or Material Expansion. With regard to cyanidation facilities: ()
- a. The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or ()
- b. A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or ()
- c. A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. ()
- d. For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. ()
22. Material Stabilization. Managing or treating spent ore, tailings, other solids and/ or sludges resulting from the cyanidation process *in such a manner* to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility *ensuring* that all discharges comply with all applicable standards and criteria. ()
- ~~46~~23. Mine Panel. That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)
- ~~47~~24. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)
- ~~48~~25. Mineral. Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~1926.~~ **Mineral Stockpile.** Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)

~~207.~~ **Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)

~~28.~~ **Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. ()

~~249.~~ **Operator.** Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the ~~act~~ chapter. (~~11-1-89~~)()

~~2230.~~ **Overburden.** Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)

~~231.~~ **Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (11-1-89)

~~2432.~~ **Peak.** A projecting point of overburden. (11-1-89)

~~33.~~ **Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. ()

~~34.~~ **Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. ()

~~35.~~ **Permit.** When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

36. Pilot Facility. ()

a. A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: ()

i. The feasibility of metals recovery from an ore; or ()

ii. The optimum operating conditions for a predetermined process to extract values from an ore. ()

b. A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. ()

2537. Pit. An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)

38. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. ()

39. Post Closure. The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. ()

40. Process Waters. Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. ()

2641. Reclamation. The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

2742. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

2843. Ridge. A lengthened elevation of overburden. (11-1-89)

2944. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

45. Small Cyanidation Processing Facility. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. ()

3046. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

3447. Surface Mining Operations. The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

3248. Surface Waters. The surface waters of the state of Idaho. (11-1-89)

3349. Tailings Pond. An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

50. Treatment. With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. ()

51. Water Balance. An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. ()

52. Water Management Plan. A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. ()

53. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. *These* waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

54. Weak Acid Dissociable (WAD) Cyanide. The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN⁻ I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ()

011. -- 049. (RESERVED).

050. ADMINISTRATION.

The ~~D~~epartment ~~of Lands~~ shall administer these rules under the direction of the director.

(11-1-89)()

051. -- 059. (RESERVED).

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. Diligence. All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof.

(11-1-89)

02. When Exploration Is Surface Mining. Exploration operations may under some circumstances constitute "surface mining operations"; (see Subsection 010.3046).

(11-1-89)()

03. Notification. Any operator desiring to conduct exploration ~~within the state of Idaho~~ using motorized earth-moving equipment to locate minerals for immediate or ultimate sale, ~~in either the natural or processed state~~, shall notify the department by certified mail within seven (7) days after beginning exploration operations.

(11-1-89)()

04. Contents of Notification. The ~~letter~~ notification shall include ~~the following~~:

(11-1-89)()

a. The name and address of the operator;

(11-1-89)

b. The legal description of the exploration ~~operation~~ and its starting and estimated completion date; and

(11-1-89)()

c. The anticipated size of the exploration ~~operation~~ and the general method of operation.

(11-1-89)()

05. Confidentiality. ~~The letter~~ Any such notification shall be treated as confidential in accord with Section 180.

(11-1-89)()

06. Exploration Reclamation (Less Than Two Acres). Every operator who conducts exploration ~~operations~~ affecting less than two (2) acres shall:

(11-1-89)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)

b. Conduct revegetation activities in accordance with Subsection 140.101. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (11-1-89)()

c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. ()

ed. If water runoff from exploration ~~operations~~ causes siltation of surface waters in ~~excess of that which~~ amounts more than normally results from runoff, the operator shall ~~prepare~~ reclaim affected lands and adjoining lands under his control as is necessary to re-establish ~~conditions of runoff water existing~~ conditions that existed prior to ~~commencement of~~ starting exploration ~~operations~~, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (11-1-89)()

07. **Exploration Reclamation (More Than Two Acres).** Reclamation ~~required for of~~ lands where exploration ~~operations affecting~~ has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (11-1-89)()

~~a. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on federal mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (11-1-89)~~

~~b. If water runoff from affected lands results in siltation of surface waters in excess of that which normally results from runoff, the operator shall prepare affected lands and adjoining lands under the operator's control as is necessary to meet state water quality standards, or to re-establish conditions of runoff water quality prior to commencing exploration operations, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard, unless baseline data is provided to rebut the presumption. (11-1-89)~~

ea. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or ~~section of~~ road segment be left for a specific purpose and not be cross-ditched or revegetated; ~~if such request or petition is approved.~~ If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or ~~section of~~ road segment. (11-1-89)()

~~d. The operator shall conduct revegetation activities in accordance with Subsection~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~140.10.~~

~~(11-1-89)~~

eb. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)

fc. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)

gd. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)

he. Abandoned lands affected by ~~an~~ exploration ~~operation~~ shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration ~~operation~~, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. ~~(11-1-89)~~()

if. Any water containment structure created in connection with exploration ~~operations~~, shall be reasonably prepared so as not to constitute a hazard to humans ~~or animals~~ ~~life~~. ~~(11-1-89)~~()

08. Additional Reclamation. The operator and the director may agree, in writing, ~~to do any act with respect to complete additional~~ reclamation ~~above and~~ beyond the requirements ~~set forth established in the chapter and~~ these rules. ~~(11-1-89)~~()

061. -- 068. (RESERVED).

069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.

01. Approval Required. Approval of a reclamation plan by the department is required even if approval of such plan has been or will be obtained from a federal agency. ()

042. No Operator Shall Conduct Surface Mining Operations. No operator shall conduct surface mining operations, ~~as defined in these rules~~, on any lands in the state ~~of Idaho~~ until the surface mining reclamation plan has been approved by the director, and the ~~department has received~~ operator has filed a bond ~~meeting that meets~~ the requirements of ~~the chapter and~~ these rules. ~~(7-1-98)~~()

023. Application Package. The operator must submit five (5) complete copies of the ~~surface mining~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be ~~granted approval~~ approved. Separate surface mines are individual, physically disconnected operations. ~~The~~ A complete application package consists of: ~~(7-1-98)~~()

a. An application provided by the director; (7-1-98)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04. ~~The map and reclamation plan may be combined on one (1) sheet if practical; and~~ (7-1-98)(____)

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency ~~requiring~~ that requires an action or actions ~~to be taken~~ to prevent environmental damage, both the operator and the authorized agent will be notified as well ~~as the operator~~. (7-1-98)(____)

034. Map Requirements of Maps. A vicinity map shall be prepared on standard United States Geological Survey, ("USGS") seven and one-half (7.5) minute quadrangle maps, or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to ~~adequately show the following:~~ (7-1-98)(____)

a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed, ~~in conducting conjunction with~~ the surface mining operation, ~~along with and the~~ approximate dates for construction, reconstruction, and abandonment; (7-1-98)(____)

b. The approximate location, and ~~the~~ names, if known, of drainages, streams, creeks, or water bodies ~~of water~~ within one thousand (1,000) feet of the surface mining operation; (7-1-98)(____)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section; (7-1-98)(____)

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations ~~following approval of a surface mining reclamation plan;~~ (7-1-98)(____)

e. The currently planned storage locations of fuel, equipment maintenance products, ~~and~~ wastes, and chemicals, ~~which that~~ will be utilized in the surface mining operation; (7-1-98)(____)

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds ~~which that~~ will be utilized ~~in surface mining operations;~~ (7-1-98)(____)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

~~i. On a map, operators shall identify the best management practices which will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation;~~ (7-1-98)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

045. ~~Requirements for~~ Reclamation Plan Requirements. ~~A~~ Reclamation plans must be submitted in map and narrative form and include the following: (7-1-98)()

a. Where surface waters are likely to be impacted, and when requested by the director, ~~the operator shall provide~~ document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the ~~best management practices~~ BMPs the operator will ~~take~~ use to control such ~~nonpoint source~~ impacts during surface mining and reclamation; (7-1-98)()

b. Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (7-1-98)()

c. Roads to be reclaimed; (7-1-98)

d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)

e. The planned reclamation of wash plant or sediment ponds; (7-1-98)()

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities. ()

05. ~~Approval Required.~~ ~~Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency.~~ (7-1-98)

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.

01. Reclamation Plan Approval Required. Approval of a reclamation plan by the department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations, ~~as defined in these rules,~~ on any lands in the state ~~of Idaho~~ until the ~~surface mining~~ reclamation plan has been approved by the director, and the ~~department has received a~~ operator has filed the required performance bond ~~meeting the requirements of these rules. Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit all operating plans to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government.~~ (7-1-98)()

02. Application Package. The operator must submit five (5) complete copies of the ~~surface mining~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be ~~granted approval~~ approved. Separate surface mines are individual, physically disconnected operations. ~~The~~ A complete application package consists of:

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

(11-1-89)()

a. ~~An application provided by the director~~ All items and information required under Section 069 of these rules; (11-1-89)()

b. ~~A map or maps of the proposed mining operation which includes the information required under Subsection 070.03;~~ Any additional information required by Subsection 070.04; and (11-1-89)()

c. ~~A reclamation plan, in map and narrative form, which includes the information required under Subsection 070.04. The map and reclamation plan may be combined on one (1) sheet if practical;~~ An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (11-1-89)()

d. ~~An operating plan, if required, in map and narrative form which includes the information required under Subsections 070.05 and 070.06.~~ (7-1-98)

e. ~~An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the operator.~~ (11-1-89)

03. Map Requirements of Maps. ~~Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. Maps of the proposed surface mining operation site shall be of sufficient scale to adequately show the following:~~ Maps shall be prepared in accordance with Subsection 069.04 of these rules. (11-1-89)()

a. ~~The location of existing roads, access, and main haulage roads to be constructed or reconstructed, in conducting the surface mining operation, along with approximate dates for construction, reconstruction, and abandonment;~~ (11-1-89)

b. ~~The approximate location, and the names, if known, of all streams, creeks, or bodies of water within one thousand (1,000) feet of the surface mining operation;~~ (11-1-89)

c. ~~The approximate boundaries of the lands to be utilized in the surface mining operations, including legal description to the quarter-quarter section;~~ (11-1-89)

d. ~~The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations following approval of a surface mining reclamation plan;~~ (11-1-89)

e. ~~The currently planned location of all tailings ponds and other ancillary structures including storage locations for fuel; equipment maintenance products and wastes; and chemicals; which will be utilized in the surface mining operation;~~ (7-1-98)

f. ~~The currently planned location and configuration of pits, mineral stockpiles, and overburden disposal areas, and topsoils/growth medium storage which will be utilized in surface mining operations;~~ (7-1-98)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~g. Scaled cross-sections by length and height showing surface profiles prior to mining; and~~ (11-1-89)

~~h. A surface and mineral control or ownership map of appropriate scale for boundary identification.~~ (11-1-89)

04. Reclamation Plan Requirements ~~for Reclamation Plan~~. A ~~r~~Reclamation plans must ~~be submitted in map and narrative form and~~ include all of the information required under Subsection 069.05 and the following additional information: (11-1-89)()

~~a. Scaled cross-sections by length and height, showing planned surface profiles before and after mining and reclamation;~~ (11-1-89)

~~b. On a drainage control map, show the best management practices to be utilized to minimize erosion on affected lands;~~ (11-1-89)

~~c. Roads to be reclaimed;~~ (11-1-89)

~~d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates;~~ (11-1-89)

~~ea. The A description of the planned reclamation of tailings or sediment ponds; and~~ (11-1-89)()

~~fb. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs.~~ (11-1-89)

~~g. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the operator will take to control such nonpoint source impacts during surface mining and reclamation.~~ (7-1-98)

~~hc. A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices BMPs that will be used to mitigate ~~the~~ any impacts, ~~if any~~, from such acid rock drainage.~~ (7-1-98)()

~~d. Other pertinent information the department has determined is necessary to ensure that the operator will comply with the requirements of the chapter.~~ ()

05. Operating Plan Requirements ~~for Operating Plan~~. A complete operating plan shall consist of: (7-1-98)()

~~a. Maps showing: the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations.~~ (7-1-98)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. ()

bii. The boundaries and acreage of the affected lands ~~to be utilized in the process of surface mining operations.~~ (7-1-98)()

eiii. ~~Maps showing~~ The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (7-1-98)()

dii. The location and, if known, the names of all streams, creeks, or water bodies ~~of water~~ within the ~~area where surface mining operations shall take place~~ area of the affected lands. (7-1-98)()

ev. The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)

fvi. The approximate boundaries and acreage of the lands that will become affected during the first year ~~of construction~~ of surface mining operations. (7-1-98)()

gb. ~~If an operator proposes to utilize~~ Additional information regarding coarse and durable rock armor, ~~if any, is proposed to be used for reclamation of mine facilities;~~ The director may, after considering the type, size, and potential environmental impact of the facility, require the operator ~~to verify the quantities, size, class, and durability of the materials which will be used for final reclamation and armoring. The operator may also be required to specify their plans to schedule, handle, and/or stockpile the coarse and durable materials to ensure that adequate quantities of these materials are available during reclamation.~~ to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (7-1-98)()

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. ()

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. ()

hc. ~~If an operator proposes to construct waste rock or overburden storage facilities, or excavate pit walls in excess of one hundred (100) feet high, and failure of the facilities or pit would reasonable be expected to adversely impact adjacent surface waters or adjacent private or state lands;~~ The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by ~~a~~ registered an engineer registered in the state of Idaho, which shows ~~these features would be constructed to meet accepted safety standards.~~ that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, ~~The~~ analysis may be required to consider the long-term

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~strength~~ stability of ~~the stored materials and rock~~ these structures, the potential for groundwater ~~buildup~~ accumulation, and the expected seismic accelerations at the site. (7-1-98)()

~~06. Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency.~~
(11-1-89)

071. Application Procedure And Requirements For Permanent Closure Of Cyanidation Facilities.

01. Permanent Closure Plan Approval Required. No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. ()

02. Permanent Closure Plan Requirements. A permanent closure plan shall: ()

a. Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; ()

b. Include a timeline showing: ()

i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and ()

ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. ()

c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; ()

d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. ()

e. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. ()

f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; ()

g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; ()

h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. ()

i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; ()

j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; ()

k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: ()

i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; ()

ii. Assume that permanent closure activities will be completed by a third party whose services are contracted for by the board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: ()

(1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and ()

(2) An amount acceptable to the department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the department will incur in association with contract administration. ()

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: ()

i. Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. ()

m. Provide any additional information that may be required by the department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. ()

03. Preapplication Conference. Prospective applicants are encouraged to meet with the department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. ()

04. Application Package for Permanent Closure. An application and its contents submitted to the department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. Five (5) copies of the application package must be submitted to the department. A complete application package for an operator proposing to use cyanidation shall consist of: ()

a. A department application form completed, signed, and dated by the applicant. This form shall contain the following information: ()

i. Name, location, and mailing address of the cyanidation facility; ()

ii. Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; ()

iii. Land ownership status (federal, state, private or public); ()

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and ()

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. ()

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; ()

c. A permanent closure plan as prescribed in Subsection 071.02; ()

d. The DEQ application and supporting materials; ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. ()

05. **Application fee.** The application fee shall consist of two (2) parts: ()

a. Processing and review fee. ()

i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the department's review; the assumptions on which the department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the department expects to incur, and indirect expenses equal to ten percent (10%) of the department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. ()

ii. If the department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the department's estimate, or may commence negotiations with the department to establish a reasonable fee. ()

iii. If, within twenty (20) days from issuance of the department's estimate, the department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the board. The board shall: ()

(1) Review the department's estimate; ()

(2) Conduct a hearing where the applicant is allowed to give testimony to the board concerning the department's estimate; and ()

(3) Establish the amount of the application review and processing fee. ()

iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the board's decision or withdraw the application. ()

v. Nothing in this section shall extend the time in which the board must act on a plan submitted. ()

b. Permanent closure cost estimate verification fee. ()

i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the department may employ a qualified independent party, acceptable to the operator and the board, to verify the accuracy of the permanent closure cost estimate. ()

ii. The applicant shall be solely responsible for paying the department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

estimate. The applicant may participate in the department's processes for identifying qualified parties and selecting a party to perform this work. ()

iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. ()

~~0742.~~ -- 079. (RESERVED).

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION To Perform Surface Mining, Reclamation, And Ore Processing Using Cyanide.

01. Return of Application. ~~Within thirty (30) days after receipt by the department, an application for a surface mining reclamation plan may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection pursuant to Section 47-1507(b), Idaho Code.~~ (11-1-89)()

a. Surface mining reclamation. Within thirty (30) days after receipt of a reclamation plan by the department, an application for surface mining reclamation may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

b. Permanent closure plans for cyanidation facilities. Within thirty (30) days after receipt of a permanent closure plan by the department, an application for permanent closure of a cyanidation facility may be returned for correction and resubmission, if the permanent closure plan does not meet the requirements of Section 071 of these rules. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

02. Agency Notification and Comments.

a. Nonconfidential materials submitted under Sections 069, ~~and~~ 070, and 071 shall be forwarded by the director to the Idaho Departments of Water Resources, Environmental Quality (~~DEQ~~), and Fish and Game for review and comment. ~~Such review and comment shall not extend the legal time limit for the director to notify the applicant of a decision on the application.~~ The director may decide not to circulate applications submitted under Section 069 if the director determines the impacts of ~~such~~ the proposed activities are minor and do not involve surface waters. The director may provide public notice on receipt of a reclamation plan or permanent closure plan. In addition, ~~a copy of an application~~ nonconfidential contents of an application will be provided to individuals who request the information in writing, as required by the Idaho Public Records Act. (7-1-98)()

~~**03. Notification of Cities and Counties.** Upon receipt of a proposed reclamation plan or amended or supplemental reclamation plan, the director shall notify the cities and counties in which the surface mining operation is proposed. The notice shall include the name and address of~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations.~~

(7-1-98)

~~a. Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of Idaho Code Title 47, Chapter 15.~~

(7-1-98)

~~b. No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or surface mining operations in this state which conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to Idaho Code Title 67, Chapter 65~~ Upon receipt of a complete application for reclamation of surface-mined areas or permanent closure of a cyanidation facility, the director shall provide notice to the cities and counties where the surface mining or cyanidation facility operation is proposed, in accordance with Section 47-1505(7), Idaho Code. The notice shall include the name and address of the operator, the procedure and schedule for the department's review, and an invitation to review nonconfidential portions of the application, if requested in writing. Such notice will be provided upon receipt of a reclamation plan, a permanent closure plan, or an amended or supplemental plan for an existing operation, or an amended cost estimate to complete permanent closure of a cyanidation facility, if required under the chapter and these rules..

(7-1-98)()

043. Decision on ~~Application in Sixty Days~~ Reclamation Plans. ~~The director must notify the applicant in writing of approval or denial within sixty (60) days of receipt of the application, unless prevented from inspecting the proposed surface mining site as provided in Subsection 080.10. If the director fails to deliver a notice of approval or denial within this time period, the application shall be deemed to comply with these rules, and the applicant may proceed, with bonding requirements under Section 120, as though approval for the application had been received. The director shall review a new reclamation plan or an amended or supplemental reclamation plan~~ Pursuant to Sections 47-1507 and 47-1508, Idaho Code.

(7-1-98)()

05a. Approval. ~~Following review of an application for approval of a new reclamation plan, or for amendment of an existing plan, the director shall approve the application if it meets the requirements of the rules, the act, and other pertinent laws and regulations, and shall deliver written notice of the decision to the operator. Operations may then commence after the bonding requirements of Section 120 are met.~~

(11-1-89)()

i. Within sixty (60) days of receipt of an application that complies with Subsections 069 and 070 of these rules, the department shall provide written notice to the applicant that the reclamation plan or any amendment(s) or supplementary plan(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the reclamation bond required; or ()

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments or supplementary plans thereof shall be deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-1512(c), Idaho Code. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

iii. The operator and director may agree, in writing, to implement additional actions with respect to reclamation that extend beyond the requirements set forth in these rules. ()

~~06b.~~ Inspections. ~~If the director deems a field inspection of the proposed surface mining operations site necessary in processing an application, the applicant will be contacted and asked that he or his duly authorized employee or agent be present. The applicant shall make such persons available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear.~~ The director may determine that an inspection of the proposed surface mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application. ~~(11-1-89)~~()

i. If the director decides to perform an inspection, the applicant will be contacted and asked that he or an authorized employee or agent be present. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear. ()

ii. If weather conditions preclude an inspection of a proposed surface mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended or supplementary plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512(c), Idaho Code. ()

04. Decision on Cyanidation Facility Permanent Closure Plans. Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a complete application, the director shall: ()

a. Coordination with DEQ. Initiate a coordinated interagency review of the application by providing a notice in writing to the DEQ director that the department has received an application for permanent closure of a cyanidation facility; ()

b. Approval. ()

i. Within one-hundred eighty (180) days of receipt of an application that complies with Subsection 071.04 of these rules, the department shall provide written notice to the applicant that the permanent closure plan is approved or denied and, if approved, the amount of the permanent closure bond required; or ()

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments or supplementary plans thereof, shall be deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period shall be extended in accordance with Section 47-1512(d), Idaho Code. ()

c. Inspections. The director may determine that it is necessary to inspect the proposed cyanidation facility location if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director determines to inspect the site, the applicant will be contacted and

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

asked that he or an authorized employee or agent be present. The department may proceed with an inspection if the applicant or his designated employee or agent does not appear. ()

ii. If weather conditions preclude an inspection of the proposed cyanidation facility, the director shall provide written notice to the applicant that processing of the application has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512(d), Idaho Code. ()

075. Nonpoint Source Pollution. When the director determines, after consultation with the DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface and ground waters, the director shall ~~request, and~~ require the operator ~~shall~~ to provide ~~to the director,~~ baseline preproject surface and ground water monitoring information, and furnish ~~ongoing~~ additional monitoring data during the life of the project. This provision shall not require any additional baseline preproject ~~surface water~~ monitoring information or ongoing monitoring data where such ~~information or~~ data is already required to be provided ~~pursuant to~~ under any federal or state law and is available to the director. (11-1-89)()

06. Permanent Closure Plan Approval. ()

a. The department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. ()

b. Except for the concurrent and additional permanent closure requirements that may be established in a permit issued by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," an approved permanent closure plan shall define the nature and extent of the operator's obligation under the chapter. ()

c. The permanent closure plan, as approved by the department in coordination with the DEQ, shall be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and shall be enforceable as such. The operator shall ensure that closure complies with the approved plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. ()

d. No sooner than one hundred and twenty (120) days after an application for a permanent closure plan has been submitted to the department, the applicant may submit a reclamation plan as required by Section 070 of these rules. The department will review and approve the reclamation plan in accordance with Subsection 080. ()

e. Approval of a permanent closure plan by the department is required even if approval of such plan has been or will be obtained from an appropriate federal agency. ()

087. Reasons for Denial of an Application. If the director rejects an application, the director ~~must also~~ shall deliver in writing to the applicant a statement of the reasons the application ~~was~~ has been rejected, the factual findings upon which the rejection ~~was~~ is based (~~if applicable~~), a statement of the applicable statute(s) and rule(s) ~~involved~~, the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied ~~in order~~ to meet the requirements of the chapter and these rules.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

The applicant may ~~then~~ submit an amended application ~~which will be processed as described in Section 080~~ in accordance with Sections 069, 070 or 071 for review and, if appropriate, approval by the department. The director shall deny a reclamation plan, permanent closure plan, or any amendments or supplementary plans thereof if: (11-1-89)()

a. The application is inaccurate or incomplete: ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect public safety, health, and welfare, in accordance with the scope and intent of these rules, or to protect beneficial uses of the waters of the state, as determined by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation" and other DEQ rules cited therein. ()

098. Public Hearing. The director may, ~~at his discretion,~~ call a public hearing to determine whether a proposed application complies with the chapter and these rules. ~~The A~~ hearing shall be conducted ~~according to~~ in accordance with Section 110. ~~A hearing may not cause the director's action on a plan to extend beyond sixty (60) days from time the plan was received by the director.~~ (11-1-89)()

10. Notification of Decision. ~~The applicant will be notified in writing of the director's decision to approve or reject the application within sixty (60) days of its receipt. If weather conditions prevent the director from inspecting the proposed surface mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The director's decision upon the application must be given to the applicant in writing within thirty (30) days of the date that weather conditions permit inspection. If the director fails to take action within the statutory time limits, the plan shall be deemed to comply with the act and the operator may commence operations upon furnishing a bond to the department that meets the requirements of these rules.~~ (11-1-89)

11. Approved Plan. ~~Notice of approval shall constitute an approval of the reclamation plan and such approved plan shall govern and determine the nature and extent of the reclamation obligations of the operator. A bond in accord with Section 120 must be received by the department before mining operations can begin.~~ (11-1-89)

1209. Referral to Board. The director may refer the decision concerning ~~approval or rejection of~~ an application to the board. This action will not ~~operate to~~ extend the time ~~allowed the director period~~ for ~~review and decision under these rules~~ a decision to approve or deny an application. (11-1-89)()

13. Additional Reclamation. ~~The operator and the director may agree, in writing, to do any act with respect to reclamation above and beyond the requirements set forth in these rules.~~ (11-1-89)

1410. Appeal of Final Order. Any final order of the board regarding an application for ~~approval of~~ a surface mining reclamation plan or for permanent closure of a cyanidation facility may be appealed ~~pursuant to Subsection 160.07~~ as set forth in Section 47-1514, Idaho Code. (11-1-89)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

081. -- 089. (RESERVED).

090. AMENDING AN APPROVED Reclamation Plan.

01. Application Cause for Reclamation Plan Amendment. In the event ~~that a material change arises which the operator, or the director believes require a change in the reclamation plan, the operator will submit an application to amend the plan and state the reasons therefor~~ circumstances arise that necessitate amendments to an approved reclamation plan, the operator shall submit an application to amend the plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved reclamation plan. If the director identifies a material change ~~which the director he~~ believes requires a change in the reclamation plan, the director must deliver in writing, to the operator, a detailed statement identifying the material change. ~~The director must also identify in writing, and the action(s) that must be taken necessary to amend the plan and~~ address the material changes. (7-1-98)()

02. Review of Amendment. The director will process an application to amend a plan in accordance with Sections 080 and ~~Section~~ 110²; provided, however, that no ~~(1)~~ land; or ~~(2)~~ aspect or provision of an approved reclamation plan; that would not be affected by the proposed amendment, shall be subject to ~~such the~~ amendment, ~~or to~~ review or reapproval in connection with ~~the~~ processing ~~of an the~~ application. ~~for such an amendment; nor may a~~ Approval of an amendment ~~to the reclamation plan shall not~~ be conditioned upon the performance of any actions not required by the approved reclamation plan or the proposed amendment itself, unless the operator agrees to perform ~~that~~ such actions. (11-1-89)()

03. Minor Amendments. Minor amendments to an approved reclamation plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved reclamation plan and so long as water quality standards will be met and existing beneficial uses will be protected. (11-1-89)

091. Amending An Approved Permanent Closure Plan.

01. Cause for Permanent Closure Plan Amendment. In the event circumstances arise that necessitate amendments to an approved permanent closure plan, the operator shall submit an application to amend the permanent closure plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved permanent closure plan. Circumstances that could require a permanent closure plan to be amended include: ()

a. A material modification or material expansion in the cyanidation facility design or operation for which the approved permanent closure plan is no longer adequate. ()

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate. ()

c. A material change as defined in Subsections 010.20.b.i. and 010.20.b.ii. of these rules. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan shall be submitted to the department in writing. The director shall process an application for amendment in accordance with Section 080. An application to amend a permanent closure plan shall include: ()

- a.** A written description of the circumstances that necessitate the amendment; ()
- b.** Data supporting the request; ()
- c.** The proposed amendment; ()
- d.** A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; ()
- e.** A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and ()
- f.** Payment of a reasonable fee as may be determined by the director in accordance with Section 47-1512, Idaho Code. ()

03. Modification at Request of Director. If, following consultation with the DEQ, the director determines that cause exists to amend the permanent closure plan the director shall notify the operator in writing of his determination and explain the circumstances that have arisen which require the permanent closure plan to be amended. Within thirty (30) days or as agreed by the operator and the department, the operator shall submit an application to amend the permanent closure plan in accordance with Subsection 091.02. ()

04. Minor Amendments. Minor amendments to an approved permanent closure plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved permanent closure plan and so long as water quality standards will be met and existing beneficial uses will be protected. ()

091.2. -- 099. (RESERVED).

100. DEVIATION FROM AN APPROVED Reclamation PLAN.

01. Unforeseen Events. If a ~~surface mining~~ operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue surface mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though operations do not comply with the ~~currently~~ approved reclamation plan on file with the department. This shall not excuse the operator from complying with the ~~reclamation~~ requirements ~~and best management practices~~ of Sections 140 and ~~bond requirements of Section~~ 120. (11-1-89)()

02. Notification. The operator shall notify the director, ~~shall be notified in writing,~~ within ten (10) days of the discovery of ~~events or unexpected~~ conditions that require deviation from the approved plan. A proposed amendment to the plan ~~will~~ shall be submitted by the operator ~~to the director~~ within thirty (30) days of the discovery of ~~the unforeseen events or~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~unexpected~~ those conditions.

(11-1-89)()

101. -- 109. (RESERVED).

110. PUBLIC HEARING.

01. Call for a Hearing. A public hearing called by the director following receipt of a complete application submitted in accordance with Sections 069, 070, or 071 shall be conducted in accordance with Section 47-1507(d), Idaho Code. The director may call for a hearing following his preliminary review of an application for a new operation or a supplemental application of an existing operation when one (1) or more of the following circumstances arises: ()

01a. Public Concern. ~~The director may call for a public hearing following the preliminary review of the application and any concern registered with the director by~~ The public, potentially affected landowners, ~~or~~ any governmental entity, ~~which~~ or any other interested parties who may be affected by the operations proposed under the chapter have registered, in writing, a concern with the director regarding the proposed operations or cyanidation facility. The ~~sole~~ purpose of the public hearing ~~under this subsection~~ shall be to gather written and oral ~~statements~~ comments as to whether the proposed reclamation plan or permanent closure plan meets the requirements of the ~~act~~ chapter and these rules. (11-1-89)()

02b. Agency Concern. ~~The director shall call for a public hearing when~~ The director determines, after consultation with the Departments of Water Resources, ~~Environmental Quality (DEQ), the Department of Fish and Game, and affected Indian tribes (pursuant to Subsection 080.07), that the proposed surface mining or cyanidation facility operations~~ can could reasonably be expected to significantly degrade adjacent surface and/or ground waters or otherwise threaten public health, safety or welfare. ~~A~~ The purpose of a public hearing held under this subsection will be ~~conducted~~ to receive written and oral comments on the measures the operator ~~will~~ is proposing to use to protect surface and/or ground water quality from nonpoint source ~~water~~ pollution. (7-1-98)()

032. Consolidation. If the director determines that a hearing should be held, ~~under Subsections 110.01, 110.02, and 120.01, the director~~ he shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. The department will coordinate with the DEQ, as appropriate, for any hearings relating to permanent closure of a cyanidation facility to streamline application processing. (7-1-98)()

043. Hearing Location. A hearing shall be held in the locality of the proposed surface mine or a proposed cyanidation facility at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. (11-1-89)()

054. Notice of Hearing. The director shall ~~give~~ provide at least twenty (20) days' advance notice of the date, time, and place of the hearing ~~to the applicant, to;~~ federal, state, and local governmental agencies, ~~and~~ Indian tribes ~~which~~ who may have an interest in the decision; as shown on the application, and the public; to all persons ~~petitioning~~ who petitioned for ~~the~~ a hearing, ~~if any~~; and to any person identified by the applicant ~~pursuant to~~ under Subsection

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

070.02-~~e~~ as an legal owner of the ~~specific acreage to~~ land that will likely be affected by the ~~reclamation plan~~ proposed operations. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled ~~date of the~~ public hearing date.

(11-1-89)()

065. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. (11-1-89)

a. In the event a hearing is ordered under Subsection 110-03, the notice ~~to the public~~ shall describe ~~the potentially significant surface water quality degradation and shall contain the operator's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing shall be discussed at the public hearing.~~

(11-1-89)()

i. The potentially significant surface water quality impacts from the proposed surface mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from nonpoint sources of pollution; or

()

ii. The objectives of a permanent closure plan that have been submitted for review.

()

b. A copy of the application shall be placed for review in a public place in the local area of the proposed surface mining operation or cyanidation facility, in the closest ~~Department of Lands'~~ department area office, and the ~~Department's of Lands~~ administrative offices in Boise.

(11-1-89)()

076. Hearing Officer. The hearing shall be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be ~~tape~~ recorded on audio tape and, ~~if requested~~, a verbatim transcript will be prepared.

(11-1-89)()

087. Consideration of Hearing Record. The department shall consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. (11-1-89)()

111. Completion Of Permanent Closure.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan. ()

a. Within one (1) year of the final addition of new cyanide to the ore process circuit for small cyanidation processing or pilot facilities; or

()

b. Within two (2) years of the final addition of new cyanide to the ore process circuit

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

for all other cyanidation facilities; or ()

c. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The operator shall submit a permanent closure report to the department for review and approval. A permanent closure report shall be of sufficient detail for the directors of the department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.33, has been achieved. The permanent closure report shall address: ()

a. The effectiveness of material stabilization. ()

b. The effectiveness of the water management plan and the adequacy of the monitoring plan. ()

c. The final configuration of the cyanidation facility and its operational/closure status. ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities. ()

e. The operational/closure status of any land application site of the cyanidation facilities. ()

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short- and long-term discharge of pollutants from the cyanidation facility, unless otherwise permitted. ()

g. The short- and long-term water quality trends in surface and ground water through the statistical analysis of the existing monitoring data pursuant to the ore-processing by cyanidation permit. ()

h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period. ()

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities. ()

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ()

112. Decision To Approve Or Disapprove Of A Permanent Closure Report.

01. Receipt of a Permanent Closure Report. Within sixty (60) days of receipt of a permanent closure report, the director shall issue to the operator a director's determination of approval or disapproval of the permanent closure report. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report shall be based on the permanent closure report's demonstration that permanent closure has resulted in long-term neutralization of process waters and material stabilization. If a permanent closure report is disapproved, the director shall provide in writing identification of: ()

- a.** Errors or inaccuracies in the permanent closure report. ()
- b.** Issues or details which require additional clarification. ()
- c.** Failures to fully implement the approved permanent closure plans. ()
- d.** Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state. ()
- e.** Outstanding violations or other noncompliance issues. ()
- f.** Other issues supporting the department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

1143. -- 119. (RESERVED).

120. PERFORMANCE BOND REQUIREMENTS For Surface Mining.

01. Submittal of Bond Before Surface Mining. Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed two thousand five hundred (\$2,500) for a given acre of affected land ~~except as provided by the rules. A performance bond in excess of two thousand five hundred (\$2,500) for any given acres of affected land may be required by the board only when the following conditions have been met~~ unless: (7-1-98)()

a. The board has determined that such performance bond is necessary to meet the requirements of Sections ~~060, 068, 069, 070, and 140~~ 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (7-1-98)()

b. The board has delivered to the operator, in writing, a notice setting forth the reasons ~~the director~~ it believes such ~~performance~~ bond is necessary. (7-1-98)

c. The board has conducted a hearing where the operator is allowed to give testimony to the board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ~~The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived in writing, by the operator. Any hearing shall not extend the period of time limit in which the board must act on a plan submitted.~~ (7-1-98)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

02. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (7-1-98)()

03. Limits. Only surface mining reclamation bonds obtained ~~subsequent to~~ after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by ~~Subsection 120.01 the chapter, or if a material change arises in accordance to Subsection 090.01 as defined by Subsection 010.20 of these rules.~~ Any revision to the amount, term and conditions of a performance bond due to a material change ~~in the reclamation plan~~ shall apply only to the affected lands covered by the material change ~~in the reclamation plan~~. (7-1-98)()

04. Annual Bond Review. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A ~~correlative~~ commensurate increase in the bond will be required for an increase in affected acreage. ~~Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation.~~ (11-1-89)()

~~a. The bond shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice that additional bond is required, but in no event shall surface mining operations be conducted that would affect such additional acreage until the appropriate bond form has been submitted. Acreage on which reclamation is complete shall be reported in accord with Subsection 120.09 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation.~~ (7-1-98)

05. Bond Provided to the Federal Government. Any bond provided to the federal government that also meets the requirements of ~~this~~ Section 120 shall be sufficient for the purposes of these rules. (11-1-89)()

05. Form of Performance Bond. (11-1-89)

~~a. Corporate Surety Bond. This is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, on a surface mine bond form supplied by the director. The bond is to be conditioned that the operator shall faithfully perform all requirements of these rules in effect as of the date of approval of the reclamation plan, and will be payable to the state of Idaho.~~ (11-1-89)

~~b. Collateral Bond. This is an indemnity agreement executed by or for the operator, and payable to the state of Idaho, pledging cash deposits, governmental securities, or negotiable~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~certificates of deposit of any financial institution authorized to do business in Idaho. Collateral bonds shall be subject to the following conditions:~~ (11-1-89)

~~i. The director shall obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance;~~ (11-1-89)

~~ii. The director shall value collateral at its current market value, not face value;~~ (11-1-89)

~~iii. Certificates of deposit shall be issued or assigned to the state of Idaho, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator, or other person which posted the collateral bond;~~ (11-1-89)

~~iv. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors;~~ (11-1-89)

~~v. Financial institutions issuing such certificates shall waive all rights of set off or liens which it has or might have against such certificates;~~ (11-1-89)

~~vi. Any such certificates shall be automatically renewable; and~~ (11-1-89)

~~vii. The certificates of deposit shall be of sufficient amount to ensure that the director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal.~~ (11-1-89)

~~e. Letters of Credit.~~ (11-1-89)

~~i. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer, which states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit;~~ (11-1-89)

~~ii. All credits shall be irrevocable and prepared in a format prescribed by the director;~~ (11-1-89)

~~iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho; and~~ (11-1-89)

~~iv. The account party on all credits must be identical to the entity identified on the surface mining reclamation plan as the party obligated to do the reclamation.~~ (11-1-89)

06. Blanket Bond. ~~Where an operator is involved in numerous surface operations, the director may accept a blanket bond in lieu of separate bonds under approved plans. The amount of such bond shall comply with other applicable provisions of Section 120 and shall be equal to the total of the penalties of the separate bonds being combined into a single bond. The bonded~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~principal shall be liable for an amount not to exceed the approved bond rate per affected acre multiplied by the number of affected acres should action be taken against the bond under Subsection 120.11.~~ (7-1-98)

~~**07. Notice of Cancellation.** Any surety company cancelling a bond shall give the department at least ninety (90) days notice prior to cancellation. The director shall not release a surety from liability under an existing bond until the operator has submitted to the director an acceptable replacement bond or reclaimed the site. Replacement bonds shall cover any liability accrued against the bonded principal on the surface mined area covered by the previous bond. If an operator fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the director, whichever is later, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until such replacement has been made.~~ (11-1-89)

~~**08. Revocation of Surety License.** If a surety's Idaho business license is suspended or revoked, the operator shall, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the operator fails to secure such substitute surety, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until a substitution has been made.~~ (11-1-89)

~~**096.**~~ **Bond Reduction.** (11-1-89)

a. Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)

b. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

~~**407.**~~ **Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)

a. Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

~~**11. Criteria for Forfeiture.** A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation in accord with the approved reclamation plan and the applicable requirements of these rules. (11-1-89)~~

1208. Cooperative Agreements. The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

1309. Bonding Rate. An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

140. Liabilities for Unbonded Reclamation Costs. An operator who: (11-1-89)

a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

b. Does not furnish a bond required by these rules; and (11-1-89)

c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

121. Performance Bond Requirements For Cyanidation Facilities.

01. Submittal of Bond Before Operating a Cyanidation Facility. Prior to beginning construction or operation of a cyanidation facility, but no later than ninety (90) days after approval of a permanent closure plan, an operator shall submit to the director, on a permanent closure plan bond form, a performance bond meeting the requirements of Section 47-1512(a)(2), Idaho Code. The performance bond shall be in an amount equal to the total costs estimated under subsection 071.02.k. of these rules plus ten percent (10%). Upon application to the department, the operator may apply and the director may approve bonding for each phase of closure on an incremental basis. If the department authorizes phased bonding, then bonding may increase incrementally commensurate with the additional permanent closure liability. After construction and operation of the initial phase of a cyanidation facility has commenced and after filing by an operator of the initial permanent closure bond, an operator shall not construct any component of a subsequent phase or phases of the subject cyanidation facility before filing the additional permanent closure bond amount that may be required by the board. If phased bonding is not authorized, the operator shall be required to file the bond amount required to complete permanent closure of all planned phases prior to any construction. ()

02. Limits. The board may require a bond in excess of five million dollars (\$5,000,000) if the following conditions have been met: ()

a. The board has determined that such a performance bond is necessary to meet the requirements of the chapter; ()

b. The board has delivered to the operator, in writing, a notice explaining the reasons such a performance bond is necessary; and ()

c. The operator is allowed to give testimony to the board concerning the amount of the proposed bond, as provided by Section 47-1512(d)(3), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ()

03. Other Government Agency Bonds. Upon a finding by the director that the bond amount established by a federal agency is inadequate because it has not included one (1) or more permanent closure tasks required by the state, the department may require the operator to file an additional bond amount, as necessary, to satisfy the requirements of the chapter. ()

04. Bond Review. The department shall periodically review all performance bonds filed for permanent closure to determine their sufficiency to complete the work required by an approved permanent closure plan. ()

a. Once every three (3) years, the operator shall submit an updated permanent closure cost estimate to the department for review. The director will review the updated estimate to determine whether the existing bond amount is adequate to implement the permanent closure plan, as approved by the department. Any resulting change in the bond amount does not in and of itself require an amendment to the permanent closure plan as may be required by Section 091 of these rules. The director will review the estimate to determine whether the existing bond amount is adequate to complete permanent closure of the cyanidation facility. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: ()

i. The director shall notify the operator in writing of his intent to reevaluate the performance bond amount. Within a reasonable time period determined by the department, the operator shall provide to the department a revised cost estimate to complete permanent closure as approved by the department. ()

ii. Within thirty (30) days of receipt of the revised cost estimate the director shall notify the operator in writing of his determination of bond adequacy. ()

iii. Within ninety (90) days of notification of the director's assessment, the operator shall make the appropriate adjustment to the bond or the director will reduce the bond as appropriate. ()

c. The department may conduct an internal review of the amount of each bond annually to determine whether it is adequate to complete permanent closure. ()

d. For bond reviews conducted pursuant to Subsections 121.04.a. and 121.04.b., the director may employ a qualified independent party to verify the accuracy of the revised estimated costs to complete permanent closure. The qualified independent party shall be employed and the operator shall pay a reasonable fee pursuant to Subsection 071.05.b. ()

05. Bond Reduction. A performance bond for permanent closure may be reduced if, during the department's review of the performance bond pursuant to Subsection 121.04, the estimated costs to complete permanent closure of the subject cyanidation facility will be lower than the amount bonded at that time. ()

06. Bond Release. ()

a. A bond filed for permanent closure of a cyanidation facility shall be released according to the schedule in the permanent closure plan. The schedule shall include provisions for the release of the post closure monitoring and maintenance portions of the bond. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. ()

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a bond reduction for that activity. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the bond shall be reduced by an amount to reflect the activity completed. ()

c. Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the department will, in accordance with Section 47-1512(i), Idaho Code, *release the balance remaining after partial bond releases.* ()

07. Liabilities for Unbonded Permanent Closure Costs. An operator who is in violation of the chapter or any provision of these rules may be subject to civil penalties under

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

Section 47-1513(f), Idaho Code.

()

122. Form Of Performance Bond.

01. Corporate Surety Bond. A corporate surety bond is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, filed on the appropriate bond form supplied by the director. The bond shall be payable to the state of Idaho and conditioned to require the operator to faithfully perform all requirements of the chapter, and the rules in effect on the date that a reclamation plan or a permanent closure plan was approved by the department. ()

02. Collateral Bond. A collateral bond is an indemnity agreement executed by or for the operator, payable to the state of Idaho, pledging cash deposits, government securities or negotiable certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds shall be subject to the following conditions. ()

a. The director shall obtain possession of a collateral bond and, upon receipt, deposit it with the state treasurer to hold it in trust for the purpose of bonding reclamation or permanent closure performance. ()

b. The director shall value the collateral at its current market value, not its face value. ()

c. Certificates of deposit shall be issued or assigned, in writing, to the state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator or another person who posted the collateral bond. ()

d. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. ()

e. Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has or might have against such certificates. ()

f. Certificates of deposit shall be automatically renewable. ()

g. Certificates of deposit shall be of sufficient amount to ensure that the director could liquidate them before maturity upon forfeiture for the required bond amount, including any penalty for early withdrawal. ()

03. Letters of Credit. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit shall be subject to the following conditions. ()

a. All credits shall be irrevocable and prepared in a format prescribed by the director. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

b. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho. ()

c. The account party on all credits must be identical to the entity identified in the reclamation plan or in the permanent closure plan and on the cyanidation facility permit as the party obligated to complete reclamation or permanent closure. ()

04. Blanket Bond. Where an operator is involved in more than one (1) surface mining operation permitted by the department or more than one (1) cyanidation facility operation permitted by the DEQ and for which a permanent closure bond is required, the director may accept a blanket bond in lieu of separate reclamation or permanent closure bonds under the approved plans. The amount of such bond shall be equal to the total of the requirements of the separate bonds being combined into a single bond, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Sections 120 and 121 of these rules. The bonded principal shall be liable for an amount no more than the bond filed for completion of reclamation activities or permanent closure activities if the department takes action against the bond pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. ()

05. Notice of Cancellation. Any notice of cancellation by a surety company shall comply with the provisions of Section 47-1512(f), Idaho Code. ()

06. Revocation of Surety License. If a surety's Idaho business license is suspended or revoked, the operator shall comply with the provisions of Section 47-1512(g), Idaho Code. ()

123. Forfeiture Of Bond.

A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation or has not conducted permanent closure in accord with an approved plan and the applicable requirements of these rules. ()

124. -- 129. (RESERVED).

130. TRANSFER OF APPROVED PLANS.

01. Reclamation Plans. A ~~surface mining~~ reclamation plan may be transferred from one (1) operator to another after the department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the department. The new operator then shall be responsible for the past operator's obligations under the ~~act~~ chapter, these rules, and the reclamation plan. When a replacement bond is submitted relative to an approved surface mining reclamation plan, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released: "[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with surface mining reclamation plan ~~No.~~ [number], both prior to and subsequent to the date of this rider." (11-1-89)()

02. Permanent Closure Plans. An approved permanent closure plan permit may be

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

transferred to a new operator if he provides written notice to the director that includes a specific date for transfer of permanent closure responsibility, coverage, and liability between the old and new operators no later than ten (10) days after the date of closure. An operator shall be required to provide such notice at the same time he provides notice to the DEQ as required IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation". To complete a transfer, the new applicant must:

()

a. File a notarized assumption of permanent closure plan form as prescribed by the department; and

()

b. File a replacement permanent closure bond on a form approved by the department must be filed with the department as part of the replacement bond before the existing bond will be released. The following rider must be filed as part of the replacement bond before the existing bond will be released: "[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which permanent closure activities must be completed in connection with permanent closure plan [number], both prior to and subsequent to the date of this rider."

()

131. -- 139. (RESERVED).

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION ~~INTRODUCTION~~ AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

~~The use of the word "shall" with respect to any practice, act, or result specified in this rule means that employment of such practice, doing of such act, or the attainment of such result is mandated by these rules. The use of the word "should" with respect to any act or result specified in these rules means that the utilization of such practice, the doing of such act, or the attainment of such result is advisable and will constitute compliance with these rules, but does not mandate utilization of such practice, the doing of such act, or the attainment of such result if other acceptable practices, acts, or results are available. Enumeration of a practice, or act, or result in Section 140 shall not be construed to require its specific inclusion in a reclamation plan submitted for approval under Subsection 070.04 or permanent closure plan.~~

(11-1-89)()

01. Nonpoint Source ~~Sediment~~ Control.

(11-1-89)()

a. Appropriate ~~best management practices~~ BMPs for nonpoint source ~~sediment~~ controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize ~~best management practices~~ BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent ~~surface~~ waters of the state, but shall not be required to do more than is necessary to preserve the condition of ~~water~~ runoff from the affected land or the cyanidation facility prior to ~~commencement of the subject~~ conducting any exploration, surface mining ~~or exploration operations~~ or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by ~~best management practices~~ BMPs unless the operator can show, and the director determines, that a lesser standard ~~of surface water quality had~~ existed, in the area to be affected, prior to the commencement of the subject surface mining or exploration operations. ~~In addition to proper~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to:~~ (11-1-89)()

~~i. Keeping the disturbed area to a minimum at any given time through progressive reclamation;~~ (11-1-89)

~~ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration;~~ (11-1-89)

~~iii. Retaining sediment within the disturbed area;~~ (11-1-89)

~~iv. Diverting surface runoff around the disturbed area;~~ (11-1-89)

~~v. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load;~~ (11-1-89)

~~vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and~~ (11-1-89)

~~vii. Use of adequate sediment ponds, with or without chemical treatment.~~ (11-1-89)

b. ~~If best management practices~~ the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such ~~best management practices~~ BMPs to meet the controlling, ~~standard of surface water quality as determined by the director under Subsection 140.01.a., or as water quality standards are adjusted pursuant to~~ water quality as set forth in current laws, rules, and regulations. (11-1-89)()

02. Sediment Control. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: ()

~~ia.~~ Keeping the disturbed area to a minimum at any given time through progressive reclamation; ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~##b.~~ Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()

~~##c.~~ Retaining sediment within the disturbed area; ()

~~##d.~~ Diverting surface runoff around the disturbed area; ()

~~##e.~~ Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; ()

~~##f.~~ Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and ()

~~##g.~~ Use of adequate sediment ponds, with or without chemical treatment. ()

023. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet ~~the controlling standard of the applicable~~ surface water quality ~~established in Subsection 140.01.a.~~ standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (~~11-1-89~~)()

034. Overburden/Topsoil. To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden, including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (~~11-1-89~~)()

a. Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require ~~best management practices~~ BMPs necessary to prevent violation of water quality standards; and (~~11-1-89~~)()

iii. Where the operator can show that an overburden material other than topsoil is ~~equally~~ conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (~~11-1-89~~)()

b. Topsoil Storage. Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion,

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

c. Overburden Storage. Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

d. Topsoil Placement. Abandoned affected lands shall be ~~topped~~ covered with topsoil or other type of overburden ~~that is~~ conducive to ~~the plant~~ growth, ~~of vegetation~~ to the extent such materials are readily available, in order to achieve a ~~general~~ stable uniform thickness ~~to the extent that such materials are reasonably available from the mine.~~ Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. ~~(11-1-89)~~()

e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. ~~(7-1-98)~~()

~~045.~~ Roads. (11-1-89)

a. Roads shall be constructed to minimize soil erosion. ~~Such construction, which~~ may require, ~~but is not limited to,~~ restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ~~(11-1-89)~~()

b. All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)

c. Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)

d. Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)

e. Roads ~~which~~ that will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. ~~(7-1-98)~~()

f. Roads, that are not abandoned, ~~which are to~~ and continue ~~in~~ to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.042, ~~at~~ until the successor assumes control. ~~(11-1-89)~~()

05. Backfilling and Grading. (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

a. Every operator who conducts surface mining or cyanidation facility operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.101. ~~For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification.~~ (11-1-89)()

b. An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state ~~of Idaho. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification.~~ (7-1-98)()

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

d. After the disturbed area has been graded, slopes will be measured for ~~compliance~~ consistency with the approved reclamation plan or the permanent closure plan. (11-1-89)()

067. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used ~~in~~ to backfilling mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (11-1-89)()

a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

b. All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state ~~of Idaho.~~ (7-1-98)()

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.101. ~~(11-1-89)()~~

078. Settling Ponds; Minimum Criteria. (11-1-89)

a. Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

b. Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

089. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.034. ~~(11-1-89)()~~

c. Abandonment and Decommissioning of Tailings Impoundments: ~~(11-1-89)()~~

i. Dewatering: Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. ~~(11-1-89)()~~

ii. Control of surface waters: Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. ~~(11-1-89)()~~

iii. Detoxification: Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. ~~(11-1-89)()~~

iv. Reclamation: *Following After implementing* the required dewatering,

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

detoxification, and surface drainage control measures ~~operations~~, the reservoir and impounding structure shall be ~~retopped~~ covered with ~~stockpiled~~ topsoils or other ~~soils~~ material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the department, physical or chemical methods ~~of~~ for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.101, unless ~~otherwise~~ specified ~~in the reclamation plan~~ otherwise. (11-1-89)()

d. ~~Tailings~~ When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after ~~abandonment of the mining operation, final reclamation or permanent closure~~ shall be required ~~at the time the operator requests termination of the reclamation plan,~~ to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)()

~~0010.~~ Permanent Cessation and Time Limits for Planting.

(11-1-89)

a. Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (11-1-89)()

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

c. An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

~~101.~~ Revegetation Activities.

(11-1-89)

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (~~7-1-98~~)()

b. ~~Standards for Success of Revegetation. Revegetative success, u~~Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (~~11-1-89~~)()

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

ii. For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (~~11-1-89~~)()

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (~~11-1-89~~)()

vi. Vegetative cover shall not be less than that required to control erosion. (11-1-89)

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable, or more economically suitable habitat. (~~11-1-89~~)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

g. Reforestation: Tree stocking of forestlands should meet the following criteria: ~~(11-1-89)~~()

i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)

h. Revegetation is not required on the following areas: (11-1-89)

i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)

ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; ~~(11-1-89)~~()

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ~~(11-1-89)~~()

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of ~~any~~ a pit or an overburden disposal area; and ~~(11-1-89)~~()

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

i. ~~Mulching~~. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time.

(7-1-98)()

142. Petroleum-Based Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway.

(7-1-98)()

141. -- 149. (RESERVED).

150. TERMINATION OF A PLAN.

01. Terminate Upon Request of the Operator. A reclamation plan shall terminate upon request of the operator, upon ~~completion of inspection~~ by the director, ~~and a determination that all reclamation activity has been completed to the standards specified in the plan, and final inspection and following final approval by the director.~~ Upon termination, the director will release the remaining bond, notify the operator, and any authority to ~~operate under the plan~~ conduct any surface mining operations ~~under the subject plan~~ shall terminate. (11-1-89)()

02. Terminate a Permanent Closure Plan. The director shall terminate a permanent closure plan upon request of the operator, provided all the provisions and objectives of the permanent closure plan have been met, as determined by the director under Sections 111 and 112 of these rules. Upon a determination that permanent closure has been completed in accordance with the approved permanent closure plan and upon consultation with the DEQ that the operator's request to terminate a plan should be approved, the director will notify the operator that any authority to continue cyanidation operations shall cease and he will release the balance of the permanent closure bond in accordance with Subsection 121.06. ()

151. -- 159. (RESERVED).

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Right of Inspection. Authorized officers of the ~~Department of Lands, upon presentation of appropriate credentials,~~ shall have the right to enter upon lands affected by or proposed to be affected by exploration, ~~or~~ surface mining or cyanidation facility operations to determine compliance with ~~these rules~~ the provisions of the chapter. Inspections shall be conducted at reasonable times in the presence of the operator or his authorized employee or representative. The operator shall make such a person available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the operator fails to make a representative available on request. (11-1-89)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

02. Bond Forfeiture. Upon request ~~of by~~ the director, the attorney general may institute proceedings to have the bond ~~of an operator forfeited~~ for reclamation or permanent closure ~~forfeited~~ for violation of an order entered pursuant to Section ~~003~~ 47-1513, Idaho Code and these rules. (11-1-89)()

03. Satisfaction of Obligations. ~~The forfeiture of a reclamation bond shall fully satisfy all obligations of the operator to reclaim affected lands except as provided in Subsection 160.05.~~ (11-1-89)

043. Civil Penalty. ~~If the violation is committed by a~~ An unbonded operator, or an operator who violates these rules by performing an act which is not included ~~the~~ in an approved reclamation plan ~~and~~ or an approved permanent closure plan that is not subsequently approved by the department, ~~the operator~~ shall be subject to a civil penalty as ~~provided in~~ authorized by Section 47-1513(c), Idaho Code. ~~The amount of such a penalty shall be the anticipated cost of reasonable reclamation of affected lands as determined by the director.~~ (11-1-89)()

054. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a surface mine operator or cyanidation facility operator who violates the provisions of the chapter, these rules, or the terms of an existing approved reclamation or permanent closure plan. Any such action shall follow the procedures established in Section 47-1513, Idaho Code. (11-1-89)()

~~a. The director may seek injunctive relief, as provided by Section 47-1513, Idaho Code, against any operator who is conducting surface mining or exploration operations without having a required reclamation bond or an approved reclamation plan. The director may proceed by legal action to recover the anticipated cost of performing the reclamation activities required by the Surface Mining Act if the operator has no bond on file to cover this cost.~~ (11-1-89)

~~b. The director may seek injunctive relief to enjoin a surface mining operation for the operator's violation of the terms of an existing approved plan and if immediate and irreparable injury, loss, or damage to the state may be expected to occur.~~ (11-1-89)

~~c. The director shall request the court to terminate any injunction when he determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the department to pursue civil penalties for these violations in accordance with Subsections 160.06 and 160.07.~~ (11-1-89)

06. Civil Penalty. (11-1-89)

~~a. Following notice to an operator of noncompliance in accord with Section 003, in addition to the penalty established in Subsection 160.04, any operator: (1) who violates any of the provisions of the act or these rules, or; (2) who fails to perform duties imposed by these provisions, or; (3) who violates any order pursuant to the provisions of these rules, shall be liable to a civil penalty of not less than five hundred (\$500) or more than two thousand five hundred (\$2,500) for each day a violation continues after notice from the director that such violation has occurred. In addition, the director may seek injunctive relief against the operator to enjoin the operator from continuing such violation.~~ (11-1-89)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

~~b. Willful Violation. Any person who willfully and knowingly falsifies any records, plans, information, or other data required by these rules, or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. (11-1-89)~~

075. ~~Procedure for Appeals of Final Order.~~ An operator dissatisfied with a final order of the board may within sixty (60) days after receiving the order, file an appeal in accordance with Section 47-1514, Idaho Code. ~~(11-1-89)()~~

~~a. Any operator not satisfied with any final order of the board regarding these rules, may, within sixty (60) days after receiving the order, appeal to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or where the land affected by the order is located. The appeal shall be initiated by filing with the clerk of such court two (2) copies of the notice of appeal, together with two (2) copies of the complaint against the board. The complaint shall describe the prior proceedings before the board, director, or hearing officer and shall state the grounds upon which the operator believes he is entitled to relief. (11-1-89)~~

~~b. A copy of the operator's summons and complaint shall be delivered to the attorney general or his or her authorized representative. Upon receiving a notice of appeal and complaint, the board shall prepare, certify, and file in said court, a true copy of any decision, findings of fact, or conclusions of law, or order, together with any pleading upon which the case was heard and submitted to the board, director, or hearing officer. The board shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony, of any proceedings in the matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits. As such, this includes, but is not limited to, the rights of appeal to the Supreme Court of the state of Idaho. (11-1-89)~~

~~c. When the director or the board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings. (11-1-89)~~

~~d. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of these rules, the board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The board may request the court to issue an appropriate order to remedy any alleged violation. The right to appeal to the Supreme Court of the state of Idaho shall be available as in other civil suits. (11-1-89)~~

161. -- 169. (RESERVED).

170. COMPUTATION OF TIME.

Computation of time ~~for these rules~~ will be based on calendar days. In computing any period of time prescribed ~~time~~ by the chapter, the day on which the designated period of time begins is ~~not included~~ excluded. The last day of the period is included unless it is a Saturday, Sunday, or legal

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

holiday ~~on which~~ when the department is not open for business. In such a case, the time period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. ~~(11-1-89)~~()

171. -- 179. (RESERVED).

180. Public And ~~CONFIDENTIAL~~ ~~ity~~ ~~Of~~ INFORMATION.

01. Information Subject to Disclosure. Information obtained by the department pursuant to the chapter and these rules is subject to disclosure under Title 9, Chapter 3, Idaho Code ("Public Records Act"). ()

02. Public Inspection. Except as provided in Section 180 or Title 9, Chapter 3, Idaho Code, information obtained by or submitted to the department pursuant to these rules will be available to the public for inspection and copying during normal office hours. Anyone who requests assistance from the department to collect, copy or mail public information must tender, in advance, the reasonable cost of those services. ()

043. ~~Nondisclosure~~ Information Not Subject to Public Inspection. Notice of exploration as required under Section 060 and any materials submitted to the board, the director, or the department as confidential shall not be disclosed by the board, director, or department employees to any person other than the board, director, and employees of the department without the written permission of the operator. ~~(11-1-89)~~()

024. Use by Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the board, director, or department from using ~~all~~ the information ~~available to it~~ in any administrative hearing or judicial proceeding ~~brought under~~ initiated pursuant to Section ~~160~~ 47-1514, Idaho Code. ~~(11-1-89)~~()

035. BMPs. An operator shall not unreasonably designate as confidential portions of reclamation or permanent closure plans which detail proposed ~~best management practices~~ BMPs to meet state water quality standards and protect existing beneficial uses of ~~surface~~ waters of the state. ~~(11-1-89)~~()

181. -- 189. (RESERVED).

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All penalties, forfeitures, and civil damages collected ~~under the provisions of these rules~~ pursuant to the chapter, shall be deposited with the state treasurer in: ~~a special~~ ()

01. Surface Mine Reclamation Fund. The surface mine reclamation fund to be used by the director for surface-mined land reclamation purposes; or ~~(11-1-89)~~()

02. Cyanidation Facility Closure Fund. The cyanidation facility closure fund to be used by the director to complete permanent closure activities and to administer the permanent closure provisions of the chapter. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS

Rules Governing Exploration and Surface Mining in Idaho

Docket No. 20-0302-0502

PENDING FEE RULE

191. -- 199. (RESERVED).

200. COMPLIANCE OF EXISTING Reclamation PLANS.

These rules, upon their adoption, shall apply as appropriate to all existing surface mining operations, but shall not affect the validity or modify the duties, terms, or conditions of any existing approved reclamation plan or impose any additional obligations with respect to reclamation upon any operator conducting surface mining operations pursuant to a reclamation plan approved prior to adoption of these rules unless amended under Section 090. (~~7-1-98~~)(____)

RESOURCES & CONSERVATION COMMITTEE

IDAPA 20 - DEPARTMENT OF LANDS

20.03.08 - EASEMENTS ON STATE OWNED LANDS

DOCKET NO. 20-0308-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 58-104, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Major section, Section 002, Written Interpretations, which is required to be in each rule chapter, is being added to provide the information regarding where to obtain copies of the Department's informal written interpretations, i.e., operations manuals and procedures manuals.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the July 6, 2005, Idaho Administrative Bulletin, Volume 05-7, pages 59 through 64.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 58-601, 58-602, and 58-603, Idaho Code. The proposed changes will update the costs for the application and amendment fees from \$50 to \$100. The minimum compensation fee will be increased from \$250 to \$500. Appraisal fees will be established, and the maximum appraisal fee will be raised to \$1,000 from \$500. The Director's level of authority for approving easements will also increase to \$25,000 from \$10,000.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith O'Connor, Right-of-Way Specialist at (208) 334-0200.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS
Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

DATED this 14th day of September, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 58-104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency not later than July 20, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands (IDL) is initiating this rulemaking to make revisions to IDAPA 20.03.08 - "Easements on State Owned Lands," which were last modified, partially, in 1993. The amendments include, but are not limited to: application, amendment, minimum compensation, and appraisal fees; the Director's level of authority for easement approval; and the state's rights to, and/or disposal of, any timber within the easement area.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The proposed changes will update the costs for the application and amendment fees from \$50 to \$100. The minimum compensation fee will be increased from \$250 to \$500. Appraisal fees will be established, and the maximum appraisal fee will be raised to \$1,000 from \$500. The Director's level of authority for approving easements will also increase to \$25,000 from \$10,000.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.011.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith O'Connor, Right-of-Way Specialist at (208) 334-0200.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS
Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 2nd day of June, 2005.

Winston A Wiggins, Director
Idaho Department of Lands
954 W. Jefferson St.
P.O. Box 83720, Boise, Idaho 83720
Phone (208) 334-0200 / Fax (208) 334-2339

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.08, "Easements on State Owned Lands". ()

02. Scope. These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands and formerly submerged lands. Further, these rules shall not apply to easements for hydroelectric projects. (9-9-86)()

043. Valid Existing Rights. These rules shall not be construed as affecting any valid existing rights. (9-9-86)

002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.

Pursuant to Idaho Code Section 67-5201(19)(b)(iv), the Department maintains operations manuals and written procedures which pertain to the interpretation of the rules of this chapter. Copies of these documents are available for public inspection and copying at the Department of Lands, 954 West Jefferson Street, Boise, Idaho 83702-0050. ()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated herein by reference. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

Idaho Department of Lands, 954 W. Jefferson St., Boise, Idaho 83720; office hours are 8 a.m. to 5

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

p.m.(MST); except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. ()

0047. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. (9-9-86)

02. Damage or Impairment of Rights to the Remainder of the Property. The diminution of the market value of the remainder area, in the case of a partial taking. (9-9-86)

03. Department. The Idaho Department of Lands. (9-9-86)

04. Director. The Director of the Department of Lands or such representative as may be designated by the director. (9-9-86)

05. Easement. A non-possessory interest ~~held by one (1) person in land of another person whereby the first person is accorded partial use of such~~ in land for a specific purpose. Such interest may be limited to a specified term. (9-9-86)()

06. Endowment Lands. Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. (9-9-86)()

07. Exclusive Use. ~~That use specified in the easement precludes the grantor from using the easement area for any other uses.~~ (9-9-86)

087. Fair Market Value. The ~~amount~~ most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which ~~in all probability~~ the property ~~would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy~~ should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (9-9-86)()

09. Grantee. ~~The party to whom the easement is granted and their assigns and successors in interest.~~ (9-9-86)

10. Grantor. ~~The state of Idaho and its assigns and successors in interest.~~ (9-9-86)

11. Person. ~~An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government.~~ (9-9-86)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

~~12. Specific Term Easement. An easement that is issued for a specific time period of ten (10) to fifty five (55) years. (9-9-86)~~

~~1308. State-Owned Lands.~~ All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands or formerly submerged lands. (9-9-86)

~~1409. Temporary Permit.~~ An instrument authorizing a specific use on state land usually issued for five (5) years or less, but which may be issued for up to ten (10) years. (9-9-86)

~~012011. -- 019.(RESERVED).~~

~~014020.POLICY.~~

01. Easements Required. Easements shall be required for all rights-of-way of a permanent nature over state-owned land. Easements shall not be granted where temporary permits will serve the required purpose or where a lease is ~~more usual and customary~~ appropriate. (9-9-86)()

~~02. No Adverse Possession. An easement cannot be established by adverse possession on state endowment land, no matter how long the adverse use has been in existence. (9-9-86)~~

032. Prior Grants. The director shall recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. (9-9-86)()

043. Existing Easements. These rules shall not apply to any use, facility or structure described in an existing easement. For ~~modification~~ amendment of an existing easement, see Section 025. (9-9-86)()

054. Director's Discretion. The director may grant an easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. (9-9-86)

065. Reciprocal Easements. The director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. (9-9-86)

076. Interest Granted. An easement grants only such interest to the grantee as is specified in the instrument, including the right to use the property for the specified purpose without interference by the grantor. The right to use the property for all other purposes not inconsistent with the grantee's interest remains with the grantor. (9-9-86)

087. Limit of Director's Discretion. The director may grant and renew easements in all cases except when the compensation will exceed ~~ten~~ twenty-five thousand dollars (\$~~10~~25,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. (9-9-86)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

098. Width of Easement. The width of any easement granted shall not be less than eight (8) feet. (9-9-86)

09. Recordation. The department will record the easement, or easement release, with the appropriate county recorder's office. ()

10. Term Easement. The director may grant an easement which is issued for a specific time period of ten (10) to fifty-five (55) years. ()

~~0200~~21. FEES AND COMPENSATION.

01. Application Fee. The application fee for new, renewed, or amended easements is ~~forty one hundred~~ dollars (\$~~5100~~) and shall be collected from all applicants. This application fee shall be in addition to the easement compensation and appraisal costs, and is non-refundable unless the director determines that the land applied for is not under the jurisdiction of the board. (9-9-86)()

02. Easement Fee. The compensation for permanent easements over state-owned lands covered by these rules shall be as follows:

| | COMPENSATION |
|---|--|
| Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way | Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the director and supported by specific data such as an appraisal |
| Overhead transmission and power lines | Up to 100% of land value depending on the exclusivity of use as determined by the director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the director and supported by data such as an appraisal |
| Buried installations - cables, pipelines, sewerlines, waterlines | Up to 100% of land value, depending on the exclusivity use as determined by the director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the director and supported by specific data such as an appraisal |

(7-1-93)

03. Appraisal Required. An appraisal of an easement may be required where, in the opinion of the director, the easement value will exceed the minimum compensation fee of ~~two~~ five hundred ~~forty~~ dollars (\$2500). (9-9-86)()

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified departmental staff. If so desired by the applicant and agreed to by the

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

director, the applicant may provide the appraisal which must be acceptable to and meet the specifications set by the director. (9-9-86)

05. Appraisal Costs. Where the appraisal is performed by departmental staff, the appraisal costs shall be ~~assessed at actual cost and shall be~~ two hundred fifty dollars (\$250) for a market analysis, five hundred dollars (\$500) for a short form appraisal, and one thousand dollars (\$1,000) for appraisals of easements requiring board approval. The appraisal cost will be in addition to those costs outlined in Subsections ~~020021.01 and 020021.02. These costs shall include transportation, personnel costs (including per diem), and administrative overhead. An itemized statement of these costs shall be provided to the applicant.~~ In no case shall an applicant be charged more than ~~five hundred~~ one thousand dollars (\$1000) for an appraisal of an easement conducted by departmental staff. (9-9-86)()

06. Fixed Term Easements. Compensation for ~~specific~~ term easements ~~ten (10) to fifty-five (55) years~~ shall be established by appraisal. (9-9-86)()

07. Timber. ~~The grantee shall pay fair market value for all timber cut from easement unless the director elects to sell the timber through the department's timber sale program. All timber remaining uncut on the easement area shall revert to the State upon completion of any construction on the easement area and may not be cut or disturbed without first obtaining written consent from the director and payment of fair market value for the timber.~~ (9-9-86)

087. Minimum Compensation. The minimum compensation for any easement shall be ~~two~~ five hundred fifty dollars (\$2500), not including the application fee and appraisal costs. (9-9-86)()

~~021022.~~ -- 024.(RESERVED).

025. EASEMENT ~~MODIFICATION~~ AMENDMENT.

~~Modification~~ Amendment of an existing easement shall be processed in the same manner as a new application. ~~Modification~~ Amendment includes change of use, widening the easement area, or changing the location of the easement area. ~~Modification~~ Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. (9-9-86)()

(BREAK IN CONTINUITY OF SECTIONS)

040. ASSIGNMENTS.

01. Fee. Easements issued by the director or by the board are assignable provided that the assignor and assignee complete the department's standard assignment form and forward it and the non-refundable assignment fee of fifty dollars (\$50) to any department office. (9-9-86)

02. Prior Written Consent. An assignment is not valid without the prior written consent of the director. Such consent will not be unreasonably withheld. (9-9-86)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF LANDS Easements on State Owned Lands

Docket No. 20-0308-0501
PENDING FEE RULE

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee shall be required. (9-9-86)

(BREAK IN CONTINUITY OF SECTIONS)

046. PROCEDURE.

01. Contents of Application. An easement application shall contain. (7-1-93)

a. A letter of request stating the purpose of the easement; (7-1-93)

b. A ~~plat~~ map of right-of-way in triplicate; and (~~7-1-93~~)(____)

c. One (1) copy of an acceptable written description based on a centerline survey ~~of the centerline~~, or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. (~~9-9-86~~)(____)

02. Engineer Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes shall be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the Director, Department of Water Resources. (9-9-86)

03. Where to Submit Application. An easement application may be submitted to any office of the department. (9-9-86)

04. Notification of Approval. If approved, the applicant shall be notified of the amount due to the department. (9-9-86)

05. Notification of Denial. If the application is denied, the applicant shall be notified in writing of such decision. (9-9-86)

047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.

01. Approval of Contract Purchaser. The director shall not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the consideration received to insure that the state's interests are protected. (9-9-86)

02. Compensation. The compensation for easements on lands under land sale contract shall be as set out in Section ~~020021~~ except that "land value" may be the sale value. These moneys shall be applied to the principal balance on the land sale contract. Additionally, the department shall collect the ~~fifty~~ one hundred dollar (\$~~50~~100) application fee. (~~9-9-86~~)(____)

RESOURCES & CONSERVATION COMMITTEE

***DEPARTMENT OF LANDS
Easements on State Owned Lands***

***Docket No. 20-0308-0501
PENDING FEE RULE***

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. (9-9-86)

RESOURCES & CONSERVATION COMMITTEE

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5221(1), and 67-4223(a) Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Certain portions of this rulemaking pertain to implementation of fee rules, most of which are closely tied to the expected activation of a new reservation system for the Idaho Department of Parks and Recreation (IDPR). In response to a legislative request to eliminate a park and facility access fee, we have reevaluated our fee structure and are recommending implementation of adjusted fees for use of our campgrounds and facilities. These new fees will have a positive impact on various dedicated funds, which in turn is expected to generally offset a projected shortfall based on the adjustment requested by the Legislature. Additionally, several rule clarifications are included that are needed to help better define operational provisions at IDPR parks and facilities.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule. Several clarifications are also included that will help to additionally explain operational guidelines for the IDPR.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 525 through 536.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 67-4223(a), Idaho Code.

26.01.20.250.01 – Primitive Campsite, \$9.00; Campsite, \$12.00; Campsite/W, \$16.00; Campsite/E, \$16.00; Campsite/W, E, \$20.00; Campsite W,E, SWR, \$22.00; Companion Campsite, site type multiplied by 2; Extra Vehicle Charge, \$7.00; Camping Cabins, \$150.00;
26.01.20.250.02 – Reservation service fees, \$10.00.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
P. O. Box 83720
Boise, ID 83720-0065
Phone: 208-334-4180 Fax: 208-334-3741

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Certain portions of this rulemaking pertain to implementation of fee rules, most of which are closely tied to the expected activation of a new reservation system for IDPR. In response to a legislative request to eliminate a park and facility access fee, we have reevaluated our fee structure and are recommending implementation of adjusted fees for use of our campgrounds and facilities. These new fees will have a positive impact on various dedicated funds, which in turn is expected to generally offset a projected shortfall based on the adjustment requested by the Legislature. Additionally, several rule clarifications are included that are needed to help better define operational provisions at IDPR parks and facilities.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

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These fee adjustments are authorized in accordance with Sec. 67-4223(a), Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-334-4180, ext 250, dsangrey@idpr.state.id.us.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 6th day of September, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. Office hours are 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-16-04)(____)

02. Mailing Address. The mailing address for the central office is Idaho Department of Parks and Recreation, PO Box 83720, Boise, ID 83720-0065. (3-16-04)

03. Street Address. The office of the Idaho Department of Parks and Recreation is located at 5657 Warm Springs Ave., Boise, ID 83716. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

010. DEFINITIONS.

As used in this chapter:

(1-1-94)

01. ADA Campsites and Facilities.

()

a. ADA Designated Campsites. A reservable ADA campsite may only be reserved and occupied by a party that can provide proof of disability upon arrival. If not reserved after 6:00 p.m. and no other non-ADA designated sites of the same site type are available, the site would be available for one (1) night.

()

b. ADA Accessible Facilities. IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use.

()

~~042.~~ **Board.** The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor.

(3-13-97)

~~023. Camper Camping Unit. A family camping unit or a party of no more than eight (8) persons occupying one (1) camper/vehicle combination or one (1) vehicle with a maximum of two (2) tents is the combined equipment and people capacity that a site or facility will accommodate.~~

~~(3-16-04)~~()

a. Campsites. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, one (1) vehicle or RV, and up to two (2) tents, provided the combined equipment and people fit within the designated camping area of the site selected.

()

b. Facilities. Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected.

()

034. Camping Day.

()

a. For individual and group campsites the period between 2:00 p.m. of one (1) calendar day and 1:00 p.m. of the following calendar day.

~~(7-1-99)~~()

b. For individual and group camping facilities, the period between 3:00 p.m. of one (1) calendar day and 12:00 p.m. (noon) of the following calendar day.

()

~~045. Campsite. Site designated for overnight camping, including camping cabins, yurts, and tepees.~~

~~(3-7-03)~~()

a. Individual. An area within an IDPR managed campground designated for camping use by an individual camping unit or camping party.

()

b. Group. An area within an IDPR managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use.

()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

c. Facility, Individual. A camping structure within an IDPR managed campground *or* area designated for camping use by an individual camping party. ()

d. Facility, Group. A camping structure within an IDPR managed campground *or* area designated for group use. ()

056. Day Use. Use of any non-camping lands and/or facilities between the hours of 7:00 a.m. and 10:00 p.m. unless otherwise posted. (3-7-03)()

07. Day Use Fee. A fee charged for entry to a designated area. ()

068. Department. The Idaho Department of Parks and Recreation. (1-1-94)

079. Designated Beach. Waterfront areas designated by the park manager or designee for water-based recreation activities. The length and width of each designated beach shall be visibly *identified with signs*. (3-7-03)()

0810. Designated Roads and Trails. Facilities recognizable by reasonable formal development, signing, or posted rules. (3-7-03)

0911. Director. The Director and chief administrator of the Department, or the designee of the Director. (1-1-94)

102. Dock and Boating Facility. Floats, piers and mooring buoys owned or operated by the Department. (3-13-97)

143. Extra Vehicle. An additional motorized vehicle (not in tow at time of entry) without built in sleeping accommodations registered to a camp site. (3-13-97)

14. Facilities. ()

a. Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. ()

b. Group. A camping structure within an IDPR managed campground or area designated for group use. ()

125. Group Use. Twenty-five (25) or more people, or any group needing special considerations or deviations from normal Department rules or activities. (1-1-94)

136. Motorized Vehicle. Every vehicle that is self-propelled except for vehicles moved solely by human power and motorized wheelchairs as defined in Section 49-123(g), Idaho Code. (3-7-03)

~~**14.** Motorized Vehicle Entry Fee (MVEF). A fee charged for a motorized vehicle to enter a designated area. (3-16-04)~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

157. Park or Program Manager. The person, designated by the Director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the Department. (3-7-03)

18. Standard Amenities. Campsite with no serviced amenities. ()

19. Serviced Amenities. Serviced campsite amenities includes water, electricity, or sewer. ()

1620. Primary Season. The time of the year when the majority of use occurs at a park facility. (3-7-03)

1721. Vessel. Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in section 67-7003(22), Idaho Code. (3-7-03)

1822. Vessel Length. The distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

011. -- 074. (RESERVED).

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

01. Director Authority. The Director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the Department to exercise any power granted to, or perform any duty imposed upon the Director. (3-7-03)

02. Park Manager Authority. The park manager or designee may establish and enforce all rules, including interim rules. Interim rules shall apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the Department. Those rules shall be posted for public view and shall be consistent with established state laws and these rules. Interim rules shall expire in one hundred twenty (120) days from the established effective date unless approved by the Board. (3-7-03)()

076. -- 099. (RESERVED).

100. PENALTIES FOR VIOLATIONS.

Failure of any person, persons, partnership, corporation, concessionaire, association, society, or any fraternal, social or other organized groups to comply with these rules shall constitute an infraction. (1-1-96)()

01. Civil Claim. The penalty established in Section 100 of this chapter shall not prevent the Department from filing a civil claim against a violator to collect damages incurred to

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Administration of Park and Recreation Areas and Facilities

Docket No. 26-0120-0501

PENDING FEE RULE

lands, resources, or facilities administered by the Department.

(3-13-97)

02. Violators. In addition to the penalty provided in Section 100 of this chapter, or any other existing laws of the state of Idaho, any person failing to comply with any section of these rules or federal, state, or local laws, rules, or ordinances applicable under the circumstances, shall be a trespasser upon state land and subject to expulsion from any state park area for a period of time not less than forty-eight (48) hours.

(3-7-03)

101. -- 124. (RESERVED).

125. PRESERVATION OF PUBLIC PROPERTY.

The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park manager of a specific area.

~~(3-13-97)~~()

126. -- 149. (RESERVED).

150. USE OF MOTORIZED VEHICLES.

All motorized vehicles shall stay on authorized established Department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and vehicles operated within lands administered by the Department shall be licensed or certified as required under state law. The operators of all vehicles shall comply with the ~~motor vehicle entry~~ day use fee requirements, speed and traffic rules of the Department, and all other federal, state, local laws, and ordinances governing traffic on public roads.

~~(3-7-03)~~()

01. Use of Parking Spaces for Persons With a Disability. Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code.

(3-7-03)

02. Overdriving Road Conditions and Speeding Prohibited. No person shall drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person shall drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code.

(3-7-03)

03. Motorcycle and ATV Safety Helmets. Persons under eighteen (18) years of age shall wear a protective safety helmet when riding upon a motorcycle or an all-terrain vehicle as operator or passenger ~~within Idaho State Parks~~ as provided in Section 49-666, Idaho Code.

~~(3-7-03)~~()

04. Snowmobile Operation Limited. No person shall operate a snowmobile on any regularly plowed park road unless authorized by park manager or designee. Access on non-plowed roads and trails shall only be permitted when authorized by the park manager.

~~(3-30-01)~~()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

05. Compliance With Posted Regulatory Signs Required. Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. (3-7-03)

06. Obedience to Traffic Direction Required. No person shall willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control or regulate traffic within a state park. (3-30-01)

07. Restrictions. The operation of motorized vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. (~~3-7-03~~)()

08. Official Use. This rule does not prohibit official use of motorized vehicles by Department employees anywhere within lands administered by the Department. (1-1-94)

151. -- 174. (RESERVED).

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee Prohibited. Persons shall not willfully resist, delay, obstruct, or interfere with any park employee in his duties to protect the state's resources and facilities and to provide a safe place to recreate. (3-30-01)

02. Day Use. Between the hours of 10:00 p.m. and 7:00 a.m., unless otherwise posted, all persons not registered for the night or attending park sponsored activities are to leave the park. (~~3-7-03~~)()

03. Quiet Hours. Within lands administered by the Department, the hours between 10:00 p.m. and 7:00 a.m. shall be considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. (1-1-94)

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct or loud equipment are prohibited within lands administered by the Department, except in designated areas or by authority of the park manager. (1-1-94)

05. Alcohol. State laws regulating alcoholic beverages and public drunkenness shall be enforced within lands administered by the Department. (3-30-01)

06. Littering. Littering is prohibited within lands administered by the Department. (1-1-94)

07. Smoking. State Park facilities are designated as "smoke free" areas. Persons shall not smoke within park structures or at posted outdoor areas. (3-30-01)

176. -- 199. (RESERVED).

200. CAMPING.

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

01. Occupancy. Camping shall be permitted only in designated campsites, ~~with a maximum of one (1) camping unit per campsite, unless the site has been designed to accommodate or has been approved by the park manager or designee for a second unit areas, or facilities.~~ A campsite or facility will be determined occupied only after the required camping fees have been paid and registration information completed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits outlined below. (3-16-04)()

02. Self Registration. In those areas so posted, campers shall register themselves for the use of campsites and facilities, paying the appropriate fees as provided for herein and in accordance with all posted instructions. ()

023. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the Department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and "first come first served" customers. The IDPR Operations Division Administrator or designee may authorize shorter or longer periods ~~may be designated for any individual area by the park manager or designee~~ for any individual area. (3-7-03)()

034. Registration Required. All camping fees must be paid and registration information completed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for "first come first served" camping is prohibited. (3-7-03)()

045. Condition of Campsite. Campers shall keep their individual or group campsite or facility and other use areas clean. (3-7-03)()

056. Liquid Waste Disposal. All gray water and sewage wastes shall be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-30-01)

067. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (7-1-93)

078. Campsite Parking. All ~~boats, motorcycles, motorized wheeled vehicles and trailers, rigs and motorized vehicles~~ shall fit entirely within the campsite parking ~~spur~~ pad/area provided with the assigned individual or group campsite or facility. All equipment ~~which~~ that does not fit entirely within the designated campsite parking area shall be parked at another location within the campground, or outside the campground, ~~in an area as may be~~ designated by the park manager or designee. If no outside parking is available, the park manager or designee may require the party to register on a second campsite, if available. (3-7-03)()

082. Equipment. All camping equipment and personal belongings of a camper shall be maintained within the assigned individual or group campsite or facility perimeter. (3-13-97)()

0910. Check Out. ()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

a. Campsite. Campers are required to check out and leave a clean individual or group campsite by 1:00 p.m. of the day following the last paid night of camping. ~~(7-1-99)~~()

b. Facility. Campers are required to check out and leave a clean individual or group camping facility by 12:00 p.m. (noon) of the day following the last paid night of camping. ()

101. Visitors. Individuals visiting campers shall park in designated areas, except with permission of the park manager or designee. Visitors shall conform to established day use hours and ~~motor vehicle entry~~ day use fee requirements. ~~(3-7-03)~~()

142. Responsible Party. The individual purchasing an individual or group campsite or facility is responsible for ~~assuring~~ ensuring compliance with the rules within this chapter. ~~(1-1-94)~~()

123. Camping Prohibited. ~~No camping is permitted outside designated individual or group campsites unless specifically authorized.~~ Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park manager or designee. ~~(3-13-97)~~()

201. BOATING FACILITIES.

The provisions of this section do not apply to Department-operated marinas which provide moorage on a lease or long term rental basis. (3-7-03)

01. Moorage and Use of Marine Facilities. No person or persons shall moor or berth a vessel of any type in a Department-owned or operated park or marine area that is signed for other use. Vessel moorage shall be limited to no more than fifteen (15) days in any consecutive thirty (30) day period. ~~(3-7-03)~~()

02. Moorage Fees. Vessels moored between 10:00 p.m. and 7:00 a.m. at designated facilities shall be charged an overnight moorage fee. ~~(3-7-03)~~()

03. Use of Onshore Campsites. If any person or persons from a vessel moored at a Department boating facility also occupies any designated campsite onshore, the appropriate established fee for such campsite(s) shall be paid in addition to any moorage fee provided herein. (3-13-97)

04. Self-Registration. In those areas so posted, boaters shall register themselves for the use of marine facilities and onshore campsites, paying the appropriate moorage and campsite fees as provided for herein and in accordance with all posted instructions. (3-13-97)

202. -- 224. (RESERVED).

225. FEES AND SERVICES.

01. Authority. (3-13-97)

a. The Board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all applicable fees. (3-7-03)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

b. Park managers or designees may set fees for goods available for resale and services provided by staff that enhance the users experience unique to the individual park. Fees for lands, facilities and equipment unique to an individual park will be posted at that site.(3-7-03)

02. General Provisions. All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be established by Board Policy. (3-7-03)

03. Camping. Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-16-04)

04. Group Use. (7-1-93)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall ~~have~~ obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (~~1-1-94~~)()

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) to one thousand (1,000) may be approved by the Director with forty-five (45) days advance notice. Groups over one thousand (1,000) may be approved by the Board with sixty (60) days advance notice. The Director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. (1-1-94)

c. The ~~motorized vehicle entry~~ day use fee may be charged to groups entering a designated area for a noncamping visit. (~~3-13-97~~)()

05. Fees and Deposits. Fees and deposits may be required for certain uses or the reservation of certain facilities unique to an individual park and will be posted at that site. (~~3-13-97~~)()

06. Fee Collection Surcharge. A five dollar (\$5) surcharge may be added to all established fees when the operator of a motorized vehicle or responsible party of a camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the five dollar (\$5) surcharge will be assessed against the registered owner of the motorized vehicle or camping unit. (~~3-16-04~~)()

07. Admission Fees. A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

08. Cooperative Fee Programs. The Department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-10-00)

226. -- 249. (RESERVED).

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Administration of Park and Recreation Areas and Facilities

Docket No. 26-0120-0501

PENDING FEE RULE

250. FEE SCHEDULE.

01. Campsites.

| CAMPSITE FEE TABLE | |
|--|--|
| Primitive Campsite (may include: table, grill, camp spur, vault toilet, no water.) No amenities at site, camping area not defined | \$7 <u>9</u> /day |
| Basic <u>Standard</u> Campsite Any defined campsite, either tent pad or RV pad/area (may include: table; <u>and/or</u> grill; camp spur, central water, vault toilets.) | \$9 <u>12</u> /day |
| Developed <u>Serviced</u> Campsite/ W Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table; <u>and/or</u> grill; camp spur, central water, flush toilets.) | \$ 12 <u>16</u> /day |
| <u>Serviced</u> Campsite/ E Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill) | <u>\$16/day</u> |
| <u>Serviced</u> Campsite/ W, E Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill) | <u>\$20/day</u> |
| <u>Serviced</u> Campsite/ W, E, SWR Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill) | <u>\$22/day</u> |
| Deluxe <u>Companion</u> Campsite May be any campsite type, regardless of amenities, that has greater equipment/people capacity (a developed campsite that is designed to accommodate two (2) camper units may include table and/or grill) Fee determined by actual site type. | <u>\$22/day</u> Site type multiplied by two (2) |
| Electric hookups at site | additional \$4/day |
| Sewer hookups at site | additional \$2/day |
| Use of campground showers by noncampers | \$3/person |
| Limited Income Discount - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of: | \$4/day |
| Resident Disabled Idaho Veterans - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability | |
| <u>Senior Citizen Discount – Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under utilized locations and times, a senior citizen discount.</u> | <u>Maximum 50% of RV camping fee</u> |
| Extra Vehicle Charge | \$5 <u>7</u> /day |
| Camping Cabins and ; Yurts; or Teepee | \$ 72 <u>150</u> /night |

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

CAMPSITE FEE TABLE

| | |
|---|------------|
| Each additional person above the sleeping capacity of camping cabin, <u>or yurt</u> or tepee | \$12/night |
|---|------------|

(3-16-04)()

02. Reservation Service Fees, Individual Campsite or Facility. A non-refundable non-transferable (from one (1) party to another) service charge of ~~six ten~~ dollars (\$610) ~~will~~ may be assessed for each individual campsite or facility reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required.

(3-16-04)()

03. ~~Motorized Vehicle Entry~~ Day Use Fee (MVEF).

~~MOTORIZED VEHICLE ENTRY~~ DAY USE FEE (MVEF) TABLE.

| | |
|---|------|
| Daily charge per motorized vehicle. The daily MVEF day use fee expires at 10:00 p.m. on date of purchase unless the party is registered to camp, in which case, the daily MVEF will expire at 1 p.m. the following day or as posted <u>Overnight camping guests are exempt from this fee.</u> | \$ 5 |
| Daily charge per commercial motor coach (no annual pass available) | \$25 |
| Statewide Annual State Park Passport per motorized vehicle | \$35 |
| Disabled Idaho Resident Veterans - The MVEF day use fee is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability | |
| Second Vehicle Annual Passport. | \$ 5 |

(3-16-04)()

04. Special Charges. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (3-7-03)

05. Group Facility Fees. Reservation service fee, designated group campground or facility. (3-13-97)()

a. A ~~reservation~~ non-refundable, non-transferable (from one (1) party to another) service charge of twenty-five dollars (\$25) ~~shall will~~ be ~~charged for each reservation of a~~ assessed per designated group area or facility reserved. ~~Additional charges may~~ This fee will be ~~imposed by~~ charged in addition to the park manager or designee depending upon the cost of providing services usage fees for each group or campsite or facility. (3-7-03)()

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

b. Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy rate for the specific site or facility. (3-16-04)()

~~**c.** Unless other arrangements are made with the park manager or designee, all group facility use fees and any applicable deposits are required to be prepaid to confirm a group use facility reservation. Unless otherwise provided for in these rules, all use fees shall be refunded if notice of cancellation is provided not later than 2 p.m., local time, twenty-one (21) days prior to date of scheduled arrival. Unless otherwise provided for in these rules, during the primary season, the percent of fees refunded for cancellations made less than twenty-one (21) days prior to date of scheduled arrival will be based on the ability of the park manager or designee to register the cancelled sites to other parties.~~ (3-7-03)

~~**d.**~~ Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the ~~facilities are~~ facility is left in the same condition in which ~~they were~~ it was accepted. (3-7-03)()

d. Group use fees for day use facilities may be negotiated by the park manager or designee and will generally not fall below the cost of providing services. ()

06. Boating Facilities.

| BOATING FACILITIES FEE TABLE | |
|---|-----------|
| Vessel launching (per vessel/per day) (Annual park passport and daily MVEF <u>or day use fee</u> apply toward vessel launching fees) | \$5/ day |
| Overnight moorage --any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel) | \$5/night |
| Overnight moorage --persons camping on vessel | |
| Any length vessel | \$8/night |
| Any length vessel moored at buoy | \$5/night |

(3-16-04)()

07. Modification of Fees. Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions. (7-1-93)

08. Sales Tax. Applicable sales tax may be added to all sales excluding ~~daily motor vehicle entrance~~ the day use fees. (3-10-00)()

09. Length of Stay. Fifteen (15) days in any consecutive thirty (30) day period. (7-1-93)()

10. Nordic Ski Grooming Program Fee. A fee of four dollars (\$4) per person per day and thirty-five dollars (\$35) per family per season will be required at Board-approved premium Nordic ski grooming program locations. These programs may include: maintained parking areas,

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

warming facilities, winter accessible restroom facilities, regularly groomed ski trails, extensive signing, trail mapping and ski patrol services. (3-16-04)

251. -- 274. (RESERVED).

275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, AND YURT ~~AND TEPEE~~ RESERVATIONS.

01. Confirmation Requirements. ()

a. Confirmation of an Individual Campsite or Facility Reservation. ~~The prepayment~~ Full payment of all ~~applicable fees is required to confirm an individual campsite,~~ appropriate camping ~~cabin, yurt or tepee~~ and related service fees shall be made before a reservation is confirmed. (3-7-03)()

b. Confirmation of a Designated Group Campground or Facility Reservation. ()

i. Payment of the first night or daily base rate fee for a group facility and all related service fees shall be made before a reservation is confirmed. ()

ii. Payment of all camping and related service fees applicable for each campsite or facility reserved within a group campground must be paid at the time of booking before a reservation is confirmed. ()

02. Individual Campsite, ~~Camping Cabin, Yurt~~ and ~~Tepee~~ Facility Reservations. Reservations for individual campsites, ~~camping cabins, yurts~~ and ~~tepees~~ facilities may be made anytime ~~between ninety (90) days~~ up to nine (9) months in advance ~~and~~ but no less than two (2) days prior to the scheduled date of arrival. Reservations may be accepted greater than nine (9) months in advance or less than two (2) days prior to the scheduled date of arrival only with the approval of the ~~park manager~~ Operations Division Administrator or designee. All non-reservation camping is on a "first come first served" basis. (3-7-03)()

03. Multiple Campsite and Facility Reservations. ~~Multiple Reservations including ten (10) or more for individual campsites or facilities may be made up to eleven nine (119) months in advance of the scheduled arrival date, with the approval of the park manager or designee. One (1) person may pay all applicable fees. No more than thirty percent (30%) of the total number of campsites may be reserved before the ninety (90) day individual campsite reservation window. Multiple campsite reservation limitations are subject to destination park's campground design and capacity. Reservations may be accepted greater than nine (9) months in advance of arrival only with the approval of the Operations Division Administrator or designee.~~ (3-7-03)()

04. Reservation Modifications. (3-7-03)

~~a.~~ Individual and group campsite(s) or facilities. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). ~~This service fee will be assessed for each campsite involved.~~ With the exception of the reservation service fees as defined in Subsection 250.02, ~~all~~

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Administration of Park and Recreation Areas and Facilities

Docket No. 26-0120-0501

PENDING FEE RULE

any overpaid fees ~~paid~~ will be reimbursed at the time the reservation is modified.

(3-7-03)()

05. Reservation Cancellations.

(3-7-03)

a. Individual Site or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. With the exception of the reservation service fees ~~as defined in Subsection 250.02~~, all fees paid will be reimbursed at the time the reservation is cancelled.

(3-7-03)()

b. Designated Group Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs fewer than twenty-one (21) calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge of fifty dollars (\$50.00) will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled.

()

06. Park Manager Authority. The park manager or designee may deny ~~a entry to, or reservation of, any Department unit, campsite, or facility~~ to any individual whose prior documented behavior has violated Department rules or whose in-park activities are incompatible with the park's operation.

(3-7-03)()

276. -- 299. (RESERVED).

300. RESERVING GROUP USE FACILITIES.

01. General. Unless otherwise provided, designated group use facilities *and areas* may be reserved through the reservation system up to ~~eleven~~ nine (9) months in advance but at least two (2) days prior to the ~~first day to be reserved~~ date of arrival. ~~Individual campsites within designated group camping areas may be reserved by individual campers if they are not reserved by groups up to ninety (90) days prior to arrival.~~

(3-7-03)()

02. Responsible Party. A designated group leader shall be responsible for all facilities. A damage or cleaning deposit may be required by the park manager or designee as a condition of reservation.

(3-7-03)

RESOURCES & CONSERVATION COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0501

Administration of Park and Recreation Areas and Facilities

PENDING FEE RULE

03. Park Manager Authority. The park manager or designee may deny ~~a~~ *entry to, or* reservation *of any Department unit, campsite, or facility,* to any group whose prior documented behavior has violated Department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate Department rules. ~~(3-7-03)~~()

04. Additional Information. Additional information concerning group use reservations and definitions can be found in Subsection 250.065 of this chapter. ~~(3-7-03)~~()

301. -- 399. (RESERVED).

400. PARK CAPACITIES.

Where applicable, ~~P~~park managers may limit or deny access to an area whenever it has reached its designated capacity. Only if special arrangements for the public welfare have been made may the park manager allow that capacity to be exceeded. ~~(1-1-94)~~()

(BREAK IN CONTINUITY OF SECTIONS)

576. PROTECTION OF HISTORICAL, CULTURAL AND NATURAL RESOURCES.

The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes will be through written permission of the park manager or designee only. ~~(3-7-03)~~()

(BREAK IN CONTINUITY OF SECTIONS)

625. ADVERTISEMENTS/PROMOTIONS/DEMONSTRATIONS.

01. Printed Material. Public notices, public announcements, advertisements, or other printed matter shall only be posted or distributed in a special area approved by the park manager or designee. ()

02. Political Advertising. Political advertising is strictly prohibited within any lands administered by the department. ~~(3-7-03)~~()

03. Demonstrations. Public demonstrations are limited to areas approved by the park manager and subject to an approved permit issued after arrangements for sanitation, population density limitations, safety of persons and property, and regulation of traffic are made. ()